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Research Director
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By Email: hcdsdfvpc@parliament.qld.gov.au

Dear Research Director,

**Submission regarding the Domestic and Family Violence Protection and Other Legislation
Amendment Bill 2016**

The LGBTI Legal Service (the **LGBTI Legal Service**) thanks the Queensland Government for the opportunity to make a submission on the proposed Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 (the **Bill**). The passage of this Bill represents an opportunity for the Government to continue its commitment to promoting equality, ending discrimination and ensuring members of the lesbian, gay, bisexual, intersex and queer (**LGBTI**) community enjoy equal protection under the law and access to essential public services.

The Bill proposes to amend the *Domestic and Family Violence Protection Act 2012* (the **Act**) and other legislation which together constitute the legislative framework for domestic and family violence in Queensland (the **current laws**). A comprehensive response to domestic and family violence in Queensland requires the Government to give careful consideration to the unique challenges faced by the LGBTI community. The LGBTI Legal Service has provided advice and support to a significant number of domestic and family violence survivors, and is privy to the mental and physical harm experienced by members of the LGBTI community as a result of such violence. This places us in a unique position to advocate behalf of the community in respect of this issue.

Our submission considers:

- Particular domestic and family violence challenges in the LGBTI community;
- The degree to which the current laws meet the needs of the LGBTI community;
- The degree to which the Bill remedies gaps in the current laws; and
- Proposed legislative and other measures to ensure these needs are met.

The LGBTI Legal Service consents to the publication of, or reference to, this submission in any public documents and invites the Government to further discuss the matters raised in our submission.



1. About the LGBTI Legal Service

The LGBTI Legal Service is a non-profit unfunded community-based legal service, which began service on 7 July 2010 and was officially launched on 1 December 2010 by The Hon. Michael Kirby AC CMG. We are staffed entirely by volunteers, with a team of around 45 including our management committee, Executive Director and three Directors, lawyers, evening coordinators and legal assistants. The LGBTI Legal Service seeks to respond to the legal and justice challenges facing the LGBTI community, through the provision of legal services, education, resources and reform advocacy.

2. Domestic Violence in the LGBTI Community

The reasons for which two people enter an intimate relationship are common to both same-sex and opposite-sex relationships, as is the harm wrought by abuse of that intimacy. Historically, there has been a relative lack of attention paid to domestic and family violence in LGBTI communities, despite the fact that such violence is as widespread in this community as it is among the general population. The lack of attention can be attributed broadly to several factors, chief among them a relatively low rate of self-reporting by survivors, perceived prejudice in key institutions and support services, and a lack of critical attention to the domestic and family violence issues that are unique to the LGBTI community.²

3. Definition of 'Domestic Violence'

This submission turns first to the question of whether the operative legal definition of Domestic Violence in Queensland is sufficient to respond to types of abuse particular to the LGBTI context.

The Current Laws

Domestic Violence is defined in the Act to mean behaviour by one person towards another, within the context of a relevant relationship, that is physically, sexually, emotionally, psychologically or economically abusive; threatening; coercive; or in any other way controlling or dominating, or which causes the survivor to apprehend a threat to their own or another person's wellbeing.³ Domestic Violence is extended in subsequent sections to include conduct to which a child is exposed, and conduct directed at children, relatives and other associates.⁴

As such, Domestic Violence is couched in relatively broad, gender-neutral terms. Specific examples are provided for certain types of abuse listed in the primary definition, including examples of

¹ Serra, Natalie. 2013. "Queering International Human Rights: LGBT Access to Domestic Violence Remedies". *Journal of Gender, Social Policy & The Law* 21(3) 583-607; Gay and Lesbian Rights Lobby NSW, Submissions on No 27 to Social Issues Committee, Parliament of NSW, *Inquiry into Domestic Violence Trends and Issues in NSW*, 16 September 2013, 3.

² Constable, Anna; De Castro, Nancy; Knapman, Robert and Bauch, Moya. 2011. "One Size Does Not Fit All". Sydney: ACON Lesbian and Gay Anti-Violence Project; Serra, supra n 1.

³ *Domestic and Family Violence Protection Act 2012* (Qld) s 8.

⁴ *Domestic and Family Violence Protection Act 2012* (Qld) ss9, 10.



emotional and psychological abuse.⁵ One of these examples is “threatening to disclose a person’s sexual orientation to the person’s friends or family without the person’s consent”. This is clearly an example specific to the LGBTI community, and is a response to the practice of ‘outing’ which preys on a survivors’ fear of exposure to prejudice and discrimination on the basis of sexual orientation.

The various types of relationship captured by the domestic violence provisions are also gender-neutral, and sufficiently broad to apply to relationships involving LGBTI individuals. The definitions do not exclude same-sex couples, or same-sex parented families, and also protect LGBTIQ individuals who are abused by parents, siblings and other relatives.⁶

Proposed Amendments in the Bill

The Bill does not propose any amendment to the definition of domestic violence, or of the various categories of relationships captured by the Act.

Does the Definition of ‘Domestic Violence’ Meet LGBTI Needs?

The definition in its current form seeks to respond to a major additional barrier faced by LGBTI survivors of domestic and family violence, which is the persistent fear of prejudice and discrimination felt by many members of the community. Although not entirely pervasive, many members of our society have a ‘heterosexist’ or ‘heteronormative’ worldview. Here we refer to the social and cultural belief that it is more natural to be heterosexual than it is to be, or to identify as, lesbian, gay, bisexual, intersexual or trans.⁷ Similar prejudice exists in respect of LGBTI persons who are also HIV positive.⁸ Sometimes, this prejudice is borne out as homophobic, transphobic or biphobic violence and abuse. Such attitudes and behaviour are pernicious, and have a corrosive effect on the self-esteem and sense of social-inclusion felt by many LGBTI individuals as well as the LGBTI community at large.

Many LGBTI individuals respond to this reality by choosing not to publicly acknowledge their sexual or gender identity. The decision to openly identify as LGBTI is personal, and individuals who do decide to ‘come out’ often take great care to manage potential impacts on relationships with friends, relatives and other associates. The practice of ‘outing’ deprives survivors of the opportunity to make this decision themselves or manage their ‘coming out’ according to their own preferences. Many also fear that being ‘outed’ will expose them to prejudice and discrimination within the general community. Indeed LGBTI individuals often fear more than an impact on personal and professional relationships, or exposure to heterosexist abuse. LGBTI individuals may also apprehend systemic prejudice in the provision of domestic violence support services, mistreatment by the

⁵ Ibid s 11.

⁶ *Domestic and Family Violence Protection Act 2012* (Qld) ss 13-20.

⁷ Linda Peterman and Charlotte Dixon. 2003. “Domestic Violence Between Same-Sex Partners: Implications for Counselling.” 81(1) *J. Counselling & Dev* 44.

⁸ Gay and Lesbian Rights Lobby NSW, Submission on No 27 to Social Issues Committee, Parliament of NSW, *Inquiry into Domestic Violence Trends and Issues in NSW*, 16 September 2013, 3.



police, discrimination in the workplace, and even loss of child custody.⁹ This creates a sense of extreme isolation among LGBTI individuals experiencing domestic or family violence and facing the threat of being 'outed'.¹⁰

To comprehensively respond to LGBTI domestic violence issues, the Act must be drafted in sufficiently broad terms to capture the full spectrum of 'outing' practices that might be deployed against survivors, as well as the full spectrum of perceived and actual consequences of being 'outed'. The Act currently refers to non-consensual exposure of a person's sexual identity to friends and family, but abusers may also threaten to expose a person's gender identity or HIV status. Further, abusers might threaten to expose someone to a broader audience than family and friends.

What does the LGBTI Legal Service Recommend in Respect of the 'Domestic Violence' Definition?

We submit that the current examples of emotional or psychological abuse be augmented to capture 'outing' practices effecting all sections of the LGBTI community. We recommend the following examples be added to the definition of "emotional or psychological abuse" at section 11:

- *threatening to disclose or actually disclosing a person's sexual orientation or gender identity to the person's friends, family or associates without the person's consent.*
- *threatening to expose a person's HIV diagnosis to the person's friends, family or associates without the person's consent*
- *coercing a person to expose their own sexual orientation or gender identity to the person's friends, family or associates.*
- *coercing a person to expose their own HIV status to the person's friends, family or associates;*
- *telling a person they will lose custody of their children as a result of being outed.*
- *telling a partner they will not be able to access police and other support service as a result of being outed.*

4. Access to Domestic Violence Services

The 'heteronormative problem' discussed above also creates additional barriers for LGBTI individuals in accessing domestic violence services and support. Here we consider what amendments to the Act can assist survivors to overcome these barriers.

The Current Laws

The Act does not contain any provisions relating specifically to the referral of domestic violence survivors to domestic violence support services. As such, police are not able to refer to support services without the survivor's consent.¹¹

⁹ *Ib d.*

¹⁰ Satoko Harada. 2010. "Add t ona Barr ers to Break ng the S ence: Issues to Cons der When Represent ng A Surv vor of Same-Sex Domest c V o ence." 41 *U. Balt L.F.* 150.

¹¹ Satoko, *supra* n 10.

¹² *Exp anatory Notes, Domest c and Fam y V o ence Protect on and Other Leg s at on Amendment B 2016 (Q d), 10.*



The Act does however contain extensive provisions dealing with the functions and powers of police officer to investigate domestic violence, issue police protection notices, take persons into custody and apply for urgent temporary protection orders.³ Police officers must commence an investigation wherever they reasonably suspect that domestic violence has been committed, and the commencement of such an investigation does not require a survivor to seek police assistance.⁴

Proposed Amendments in the Bill

One of the primary policy objectives of the Bill is to ensure domestic and family violence survivors have access to “earlier and more tailored protection”.⁵ The Bill includes a number of measures designed to strengthen the police response to suspected domestic and family violence:

- Police officers are able to refer a survivor to specialist support service providers if there is a threat to a survivor’s life, health or safety, and can refer any suspected abuser to similar services (without consent);⁶
- Police officers are able to share ‘referral information’ to service providers, include the person’s name and contact details, the basis for suspicion of domestic or family violence, and any other information the police officer deems relevant;⁷
- Service providers are able to share information with police, if the information holder reasonably believes a person is fearing or experiencing domestic violence and the information may lessen or prevent serious risk to the person;⁸
- Police are required to consider what further action should be taken after investigating suspected violence;⁹
- The scope of police protection notices is expanded and the procedure for issuing notices is simplified;²⁰
- Mechanisms are put in place to facilitate sharing of relevant information across jurisdictions;²
- Safeguards and oversight by the court of information-sharing activities and the issuance of police protection notices are preserved.²²

Do the legislative provisions regarding referral to domestic and family violence service providers meet the needs of the LGBTI community?

There are a number of barriers facing LGBTI individuals in accessing police and support services:

- Perceived homophobia within the policy community, as well as a more generalised lack of sensitivity to LGBTI issues;

¹³ Domestic and Family Violence Act 2012 (Q d) part 4.

¹⁴ Ib d s 100.

¹⁵ Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 (Q d), 1.

¹⁶ Domestic and Family Violence Protection and Other Legislation Amendments Bill 2016 (Q d) c 44.

¹⁷ Ib d.

¹⁸ Ib d c 44.

¹⁹ Ib d c s 18, 63

²⁰ Ib d c s 19-29.

²¹ Ib d c 44.

²² Ib d.



- Significant stigmatisation of domestic violence within the LGBTI community, with some individuals feeling obliged not to report violence in order to ‘present a united front’ and avoid worsening negative stereotypes of the LGBTI community; and
- A lack of tailored services for LGBTI survivors of domestic and family violence, particularly in regional and remote areas and particularly for trans individuals and gay men; and
- A similar lack of tailored services for LGBTI perpetrators of domestic or family violence, particularly gay men who are uncomfortable attending and unable to engage with perpetrator programs attended largely by heterosexual men; and
- Concerns regarding the safety of children, particularly where the survivor is not a biological parent.²³

The LGBTI Legal Service is supportive of the proposed amendments outlined above. In particular, the LGBTI Legal Service commends the Queensland Government for placing safeguards around the referral of survivors to domestic and family violence support services. The expanded scope of police protection notices and information sharing powers is balanced by institutional and judicial oversight. Such oversight is particularly important to the LGBTI community, given the sensitivity around ‘outing’.

The Bill does not contain measures to resolve other barriers for LGBTI individuals in accessing help. These challenges may not be best addressed through legislative policy, but instead through government and community advocacy and the delivery of new public services. Many agencies and organisations have developed programs to strengthen their service response for LGBTI individuals. This includes the Queensland Police Service, who have an LGBTI Liaison Program.²⁴ These initiatives go some way to addressing the challenges faced by the LGBTI community, but more can be done. The LGBTI Legal Service is not aware of any tailored domestic and family violence support services for LGBTI individuals, and this is an area of critical need in Queensland.

What does the LGBTI Legal Service recommend in terms of access to domestic violence services?

We consider the legislation to be sufficient to meet LGBTI needs, at least in so far as any legislative response can go. However, to remedy the challenges associated with LGBTI access to domestic and family violence support services, the LGBTI Legal Service recommends:

- Establishment and funding of LGBTI-specific domestic and family violence support services, especially including early intervention initiatives, in both regional and metropolitan areas;
- Provision of support to existing LGBTI community service providers, particularly health and social services, to identify and respond to domestic violence issues;

²³ Satoko, supra n 10; Greenberg, Kae. 2012. “St H dden n the C oset: Trans Women and Domest c V o ence” 27 *Berkeley J. Gender L. & Just* 198 2012.

²⁴ <https://www.police.qd.gov.au/programs/community/gbt/>





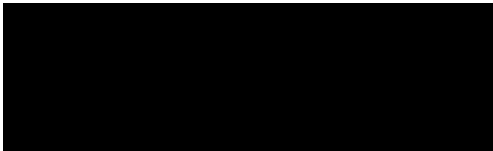
- Government advocacy to raise awareness of violence in the LGBTI community, particularly to:
 - address stigma within the LGBTI community and concerns regarding institutional responses to LGBTI domestic violence;
 - raise the 'visibility' of the LGBTI community in the domestic violence public discourse; and
- Expansion of programs like the LGBTI Liaison Program to other agencies, particularly other potential first-responders to domestic violence incidents such as the Queensland Ambulance.

Conclusion

The LGBTI Legal Service again expresses its gratitude to the Queensland Government for inviting submissions on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016. Domestic and family violence is a very real issue for the LGBTI community, and the solution lies not only in legislative reform but also in the provision of critical support services and strong advocacy on the part of both government and community leaders. We trust the Queensland Government will continue to strive for a response to the domestic and family violence challenges facing all sections of the Queensland community.

We welcome any opportunity to be involved in further consultation or feedback.

Yours sincerely,



Tom Clark

Director of Law Reform

Submission produced by Harrison Turner

