

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND  
ISSUES IN NSW**

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# Gay & Lesbian Rights Lobby

## INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND ISSUES IN NSW BY THE NSW LEGISLATIVE COUNCIL STANDING COMMITTEE ON SOCIAL ISSUES

### SUBMISSION OF THE GAY & LESBIAN RIGHTS LOBBY

19 SEPTEMBER 2011

#### INTRODUCTION

##### ABOUT THE GAY & LESBIAN RIGHTS LOBBY

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

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

The rights and recognition of children raised by lesbians and gay men have also been a strong focus in our work for over ten years. In 2002, we launched *Meet the Parents*, a review of social research on same-sex families. From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the reform recommendations outlined in our 2003 report, *And Then ... The Bride Changed Nappies*. The major recommendations from our report were endorsed by the NSW Law Reform Commission's report, *Relationships* (No. 113), and enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* (NSW). In 2010, we successfully lobbied for amendments to remove discrimination against same-sex couples in the *Adoption Act 2000* (NSW).

As it is not within the GLRL mandate to lobby on behalf of intersex, transgender and other sex and/or gender diverse people, we encourage the Committee to consult with sex and gender diverse people and organisations.

## DEFINITIONS AND TERMINOLOGY

### DOMESTIC VIOLENCE/FAMILY VIOLENCE

The GLRL supports a broad definition of domestic/family violence in state legislation.

The GLRL draws the Committee's attention to the definition recommended in the report produced in 2010 by the Australian Law Reform Commission and NSW Law Reform Commission *Family Violence— A National Legal Response* (ALRC 114). In that report, the Commissions made the following recommendation:

***Recommendation 5-1*** *State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:*

1. *physical violence;*
2. *sexual assault and other sexually abusive behaviour;*
3. *economic abuse;*
4. *emotional or psychological abuse;*
5. *stalking;*
6. *kidnapping or deprivation of liberty;*
7. *damage to property, irrespective of whether the victim owns the property;*
8. *causing injury or death to an animal irrespective of whether the victim owns the animal; and*
9. *behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above*

The GLRL also supports the recommendation made by the Commissions (Rec 5-2) that state family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate conduct that would affect—although not necessarily exclusively—certain vulnerable groups including those from the lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities. Legislation should make it clear that such examples are illustrative and not exhaustive of the prohibited conduct.

For example, there are numerous of forms of domestic violence which are unique to the LGBTI community. These include, but are not limited to:

- Threatening to, or 'outing' a partner to family, friends or colleagues;
- 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 that they will be unable to access police assistance or support from service delivery organisations because the 'system' is homophobic;
- Telling a partner they 'deserve it' because they are LGBTI;
- Telling a partner they are not a 'real' lesbian, gay or bisexual;
- Relying on stereotypes to hide or justify abuse;
- Threatening to reveal HIV status; and
- Threatening to, or withdrawing care, where one partner is dependant, for example arising from their HIV/AIDS status.

## SAME-SEX DOMESTIC VIOLENCE

### INTRODUCTION

Research and data on the incidence and prevalence of domestic violence in gay and lesbian relationships in Australia is limited. Where it does exist, it largely relies on self-reporting, which is problematic given barriers to disclosure faced by those in same-sex relationships.

However, by way of example, the domestic violence line in NSW in 2003 estimated that 5 calls out of 1000 each month were from lesbians experiencing domestic violence in a same-sex relationship. An audit of ACON's counselling files during the period June 2001- July 2003 indicated 11% of matters included issues of domestic violence.<sup>1</sup> Anecdotally, same-sex domestic violence is experienced at similar levels to those in opposite-sex relationships.

In a general sense, there are statistics which indicate a high level of homophobic abuse, violence and harassment against members of the LGBTI community in NSW. For example, in 2003 the NSW Attorney-General's Department released the report, *You Shouldn't Have to Hide to be Safe*, which documented extensive homophobic abuse, violence and harassment in NSW. That report found that of the 600 gay and lesbian community members surveyed, over half of the respondents had experienced at least one form of harassment, abuse or violence in the preceding 12 months and 85% had at some stage in their lifetime.<sup>2</sup>

The GLRL notes that the Federal Government identified same-sex domestic violence as a priority issue to be addressed in the National Human Rights Action Plan, in relation to which the Baseline Study was released earlier this year. However, there is limited reference to same-sex domestic violence in the National Plan to Reduce Violence against Women and their Children.

Against this backdrop, the two central issues arising in NSW with respect to domestic violence within same-sex relationships and/or the LGBTI community upon which the GLRL would like to focus are:

- Limited understanding, or recognition of, the dynamics of same-sex domestic violence; and
- Problems arising in relation to access to services and service delivery.

## **THE DYNAMICS OF SAME-SEX DOMESTIC VIOLENCE**

There appears to be limited awareness of same-sex domestic violence both within the broader community, but also the LGBTI community. This in turn influences recognition of the existence of domestic violence in these relationships as well as understanding of behaviour which constitutes domestic violence and appropriate responses to domestic violence, including access to services.

There are 2 key issues arising in relation to the dynamics of same-sex domestic violence:

- Barriers to disclosure; and
- Misconceptions about same-sex domestic violence, in particular in relation to 'victims' and 'perpetrators'.

### **Barriers to Disclosure**

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<sup>1</sup> C Chan 'Domestic Violence in Gay and Lesbian Relationships' *Australian Domestic and Family Violence Clearinghouse Topic Paper* (2005), 2.

<sup>2</sup> NSW Attorney-General's Department 'You Shouldn't Have to Hide to be Safe – A Report on Homophobic Hostilities and Violence Against Gay Men and Lesbians in NSW', NSW Attorney-General's Department, Crime Prevention Division (2003).

Limited disclosure of domestic violence remains a major issue. Significant barriers to disclosure of domestic violence exist for many victims and these are often exacerbated for those in same-sex relationships. In addition to the shame and stigma often associated with domestic violence, those in same-sex relationships may fear homophobia as they are required to 'come out' in order to disclose domestic violence. Same-sex domestic violence victims may also face additional barriers and vulnerabilities associated with isolation from their support networks and in many cases, families.

### **Victim v Perpetrator: The Gendered and Binary Model**

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

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

### **Primary Aggressor and Mutual Battering**

A key example relevant to the Committee's Terms of Reference relates to the identification of the primary aggressor by police in attending a domestic dispute, or making decisions about against whom an Apprehended Violence Orders (AVOs) should be placed. Failing to accurately identify the primary aggressor and primary victim, may result in victims being inappropriately charged with crimes or having AVOs made against them.

Victims of same-sex family violence may be hesitant to report the violence to police due to fears that the incident may be dealt with as 'mutual battering' or the fear that an AVO will be made against both parties.<sup>3</sup>

The GLRL suggests that one approach to this could be that the NSW police should be trained to better identify those who have perpetrated domestic violence and those who need to be protected from domestic violence, and to distinguish one from the other. The development of guidance material would assist in this regard. This is in line with recommendation 9-5 made by the ALRC and NSWLRC.

## **SERVICE DELIVERY**

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<sup>3</sup> See eg, ACON (AIDS Council of NSW) 'Homelessness and Same Sex Domestic Violence in the Supported Accommodation Assistance Program' (2004).

Barriers to accessing service delivery for people experience domestic violence in the context of same-sex relationships are multifaceted, and in many cases a victim's reasons for not seeking assistance 'needs to be viewed in its broader social, political and legal context'.<sup>4</sup>

Key issues include:

- Barriers to access arising from fears of homophobia and confidentiality;
- Lack of referral options for female perpetrators and male victims within mainstream services;
- Lack of service provider awareness, or service provider policies and procedures, in order to identify and respond to same-sex domestic violence;
- Lack of general police training in relation to responding to same-sex domestic violence. Such training and responsibility should not be limited to gay and lesbian liaison officers;
- No emergency housing accommodation for gay men;
- Difficulty accessing domestic violence refuges by lesbians and the need for appropriate screening to ensure a perpetrator is unable to access the refuge;
- Difficulty in accessing appropriate services exacerbated in rural and remote areas.

Whilst emphasising the issues outlined above, the GLRL recognises and commends the important work done by the Same Sex Domestic Violence Interagency Working Group and its constituent organisations.

## CONCLUSION

This submission provides a brief overview of some of the key issues arising in relation to same-sex domestic violence in NSW. In the context of the Committee's Inquiry, the GLRL emphasizes that members and organisations from the LGBTI community should be consulted to ensure all voices and perspectives are heard. The GLRL welcomes the opportunity to be consulted further in the course of the Inquiry.

## FURTHER INFORMATION

For further information, contact Kellie McDonald, Co-Convenor, or Senthorun Raj, Policy and Development Coordinator,

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<sup>4</sup> C Chan 'Domestic Violence in Gay and Lesbian Relationships' *Australian Domestic and Family Violence Clearinghouse Topic Paper* (2005), 4.