

27 October 2023

The Independent Review of the NLAP

By email only: submissions@nlapreview.com.au

Dear Dr Mundy

Re: Submission to the Independent Review of the NLAP, on behalf of Community Legal Centres supporting LGBTIQA+ communities

We thank you for the opportunity to make submissions to the review of the National Legal Assistance Partnership (**NLAP**).

This submission was prepared by the LGBTI Legal Service (**LGBTILS**), in collaboration with other Community Legal Centres (**CLCs**) which provide dedicated services and programs for people of diverse gender identity and expression, sexual orientation and differences in sex characteristics, who often identify as members of the LGBTIQA+ community. CLCs who have contributed to this submission include the HIV/AIDS Legal Centre (**HALC**), and the Refugee Advice and Casework Service (**RACS**). The Inner City Legal Centre (**ICLC**) also provided input and promoted the legal needs survey launched by LGBTILS that ran from late September (and is continuing). Some results of that survey are included here, and we may submit a further addendum with updated results.

While ICLC and RACS are making their own submissions to the Independent Review, this joint submission focusses on the legal needs of LGBTIQA+ people, and our experiences providing specialist, peer-led services to LGBTIQA+ people and communities across Queensland and New South Wales, whether through a dedicated centre, or a specialist program within a centre that provides services and programs to other communities.

We consent to:

- this submission being published on the Independent Review of the NLAP website;
- being identified in the Report of the Review as having made a submission;
- this submission being quoted with attribution in the Report of the Review; and
- this submission being quoted anonymously in the Report of the Review.

We would be happy to provide further information or clarification regarding any parts of our submission.

Yours faithfully,



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Acknowledgement

We pay our deepest respect to Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the lands and waters on which we work and live, and acknowledge that their sovereignty has never been ceded. We welcome and celebrate Aboriginal and Torres Strait Islander peoples who identify as part of the LGBTIQA+ community, in particular Sistergirls and Brotherboys, and acknowledge their ongoing struggle for visibility, inclusion and justice. We acknowledge the wisdom and strength of Aboriginal and Torres Strait Islander people and are committed to fostering a culture of sharing knowledge and showing solidarity to support self-determination for Aboriginal and Torres Strait Islander peoples.

Introduction

We support the Community Legal Centres Australia (**CLCA**) submission to the review. LGBTILS also endorses the Community Legal Centres Queensland (**CLCQ**) submission.

Our submission highlights insights, analysis and evidence drawn from our histories and experience providing specialist, peer-led legal services for LGBTIQA+ people and communities.

This submission does not seek to ‘cover the field’, but focusses on the following issues from in the NLAP Review Issues Paper:

- **#4 (disadvantaged groups)**: whether LGBTIQA+ people as a systemically disadvantaged group, are adequately supported through the NLAP
- **#8 (wrap around services)**: how holistic service provision can improve outcomes and reduce demand in the context of the LGBTIQA+ service sector
- **#10 (advocacy)**: how advocacy and law reform are essential elements of effective legal assistance to LGBTIQA+ communities
- **#14 (data)**: the importance of co-design in data collection and reporting for LGBTIQA+ communities.

Recommendations

We recommend that:

- LGBTIQ+ people are included as a priority group in the next NLAP, consistent with the research into legal need.
- appropriate funding agreements must be reached between the Commonwealth and the States to ensure that all LGBTIQ+ Australians, in every State and Territory, have access to specialist, peer-led legal support services.
- funding models must be sufficient to fund all necessary activities performed by these services, and consistent to ensure ongoing organisational health and viability.
- funding models must support and scaffold the existing strengths of LGBTIQ+ community legal centres to gather data and consult with LGBTIQ+ communities to research legal needs and best practice service models.
- data-collection projects and legal needs analyses should be community-driven and community-controlled, with appropriate funding and supports for community-led organisations to effectively perform these duties.
- appropriately funded specialist services for LGBTIQ+ communities should extend beyond legal service delivery to either include embedded social work or peer support programs, or to allow appropriate opportunities for partnership-building, collaboration, and joined-up service delivery.
- funding should be sufficient to perform vital non-legal functions, such as social work, peer support, research, systems advocacy, education, community engagement, and sector capacity building.

Mapping legal services for LGBTIQ+ people across Australia

LGBTIQ+ people have received no consistent funding and little attention from the Commonwealth Government and funding bodies.

In response, existing centres have adopted different models to attempt to bridge the gap:

- some centres have developed specialist programs targeted towards LGBTIQ+ clients;
- one CLC with an inner-city catchment has become a de facto statewide service through building a positive reputation within the community, and has supplemented its meagre budget with pro bono support;
- another is a standalone, metropolitan-based centre seeking to provide statewide service.

These services range in age from 3 months to 40 years old. A discussion of these services and their histories can be found below, with an overview of their funding sources, catchments and client populations provided in a brief table.

LGBTI Legal Service (Queensland)

The LGBTI Legal Service (**LGBTILS**) is a specialist, peer-led CLC established by and for LGBTIQ+ Queenslanders. It offers holistic advice, task and representation services across a wide range of areas, and engages in community education and law reform. LGBTILS was launched in 2010 by the Hon Michael Kirby. The founding committee of LGBTILS was made up of highly respected LGBTIQ+ community advocates and health professionals, lawyers from both the legal assistance sector and private practice, and academics from several Queensland universities.

LGBTILS did not have a dedicated premises for a significant portion of its history, and for a number of years operated mostly by night in the offices of the Queensland AIDS Council after their staff had left for the day. At this time, LGBTILS was staffed entirely by volunteer law students, lawyers, and LGBTIQ+ community members.

LGBTILS did not receive its first dedicated funding until 2017. Despite the significant and necessary work that LGBTILS continues to perform in community engagement, community legal education, law reform and systems advocacy, LGBTILS has never received ongoing Commonwealth funding, and only receives state government funding for activities that relate to legal service provision. LGBTILS' core budget is \$260,000 per annum to deliver specialist legal support to LGBTIQ+ people across the state of Queensland, which is supplemented by grants, donations and pro bono support. LGBTILS has leveraged pro bono assistance to provide additional capacity and engage specialist knowledge to respond to a wide range of legal problems. In the last 12 months to 30 September 2023, LGBTILS' pro bono partners and volunteer lawyers contributed approximately 2100 hours, providing essential capacity to meet the demands of the service.

HIV/AIDS Legal Centre

The HIV/AIDS Legal Centre (**HALC**) is a not-for-profit, specialist community legal centre, and the only one of its kind in Australia. HALC exists to:

- provide free and comprehensive legal assistance (within operational guidelines) to people with HIV or Hepatitis-related legal matters;
- undertake Community Legal Education and Law Reform activity in areas relating to HIV and Hepatitis;
- provide legal training, education and experience to employees and volunteers; and
- liaise and work in partnership with other organisations to achieve these objectives.

HALC was created in 1992, a time when the life expectancy of a person living with HIV was significantly lower than it is today. In those days, much of HALC's work involved end of life planning, including hospital outreach programs. As treatments have progressed, thankfully this is a less common service provided, with a large proportion of HALC's work now involving immigration due to the Australian Government's health criteria for visas.

The Refugee Advice and Casework Service (Australia-wide)

The Refugee Advice and Casework Service (**RACS**), based in New South Wales but offering migration law assistance nation-wide, has witnessed an increase in protection claims from LGBTIQ+ people who are persecuted in their home countries due to their sexual orientation, gender identity, gender expression and/or sex characteristics (**SOGIESC**).

In response, RACS developed the LGBTIQ+ Safety Program, supporting refugees and people seeking asylum who are fleeing danger based on SOGIESC grounds.

Individuals may be fleeing their home countries based on:

- the criminalisation of same-sex relationships;
- consensual sexual conduct between two people of the same sex;
- laws regarding transgender and gender diverse people;
- sexual and gender-based violence; or
- the denial of rights to assembly, freedom of expression and/or political opinion.

RACS' lawyers in this program are specially trained to support refugees who identify as

LGBTQIA+ in accessing safety in Australia.

In addition to this program, RACS has a LGBTQIA+ Toolkit for lawyers, community workers and other professionals who may work with LGBTQIA+ refugees available on the RACS website.

Inner City Legal Centre

The Inner City Legal Centre (**ICLC**) was established in 1980 by a group of local community members who identified the need for a community legal centre in the local area. ICLC's catchment area for general legal services stretches across Sydney's inner city and Eastern suburbs.

ICLC provides statewide services for those identifying as LGBTQI+, sex workers and vulnerable employees through the Employment Rights Legal Service, which they provide in collaboration with neighbouring CLC's Redfern Legal Centre and Kingsford Legal Centre. The ICLC has provided specialist support to people who identify as LGBTQIA+ and to sex workers for over forty years, and for the majority of that time those specialist services were not funded by the NLAP.

Q+Law

Fitzroy Legal Service recently launched Q+Law, a program within FLS for LGBTQIA+ Victorians with outreach to LGBTQIA+ community spaces. This service was funded by the Victorian Government and receives no NLAP funding. As Q+Law is still in its establishment stage, it was unable to contribute to this submission but provides services across a range of legal problems for LGBTQIA+ people residing in Victoria.

Current specialist assistance landscape

Whilst LGBTQIA+ legal services have proven resourceful and resilient, there are significant existing justice gaps for LGBTQIA+ Australians. Access to specialist LGBTQIA+ legal assistance throughout Australia is limited, scarce and geographically-bound. Only three out of eight Australian states and territories have a funded, specialist LGBTQIA+ legal assistance service providing generalist legal help – these three services are all located in metropolitan areas on the Eastern seaboard, and while they may have statewide catchments, they do not have sufficient funding to have a meaningful connection to, embeddedness in, or strong referral pathways from the regions.

For LGBTQIA+ people living in the other five States and Territories (ACT, Tasmania, South Australia, Western Australia, and the Northern Territory) there is virtually **no access**. LGBTQIA+ people in these jurisdictions are left to navigate legal aid services and generalist CLCs, which are often limited in scope and do not have the specialist knowledge or cultural capability to respond consistently in a safe, inclusive, accessible way. It has been identified in the literature that the majority of LGBTQIA+ people look for visibly inclusive services, and that if inclusive services are not available, almost half of LGBTQIA+ people are less likely to access support at all (see further discussion below). A recent LGBTQIA+ community legal needs survey conducted by the LGBTI Legal Service and ICLC found that 93% of respondents had **never** accessed a specialist LGBTQIA+ legal service.

Centre	Areas of Law	Eligibility	Funding sources
LGBTILS	Family & domestic violence Criminal Victims of crime Discrimination Employment Tenancy Administrative General civil	Queensland	Queensland Government (DJAG) Grants Donations & fundraising
HALC	Immigration Wills Criminal Discrimination Tenancy Employment Family and domestic violence	New South Wales & Queensland AND Diagnosed with HIV or Hepatitis	NLAP (NSW) Queensland Health (QLD) Grants Fundraising
RACS	Immigration	Australia-wide AND Seeking asylum	Legal Aid Department of Immigration Fundraising
ICLC	Family law and domestic violence Criminal Discrimination, defamation and vilification Employment law Criminal General civil	Sydney inner city and Eastern suburbs (some NSW state-wide services for LGBTIQ+ people and sex workers which are self-funded by Centre)	NLAP Grants Fundraising

1) A holistic assessment of legal need and all Commonwealth legal assistance funding

LGBTIQA+ people as a priority cohort

In Australia, it is estimated that between 4% and 7% of the population identify within the LGBTIQA+ umbrella, and that between 9% and 19% of the population experience same-sex attraction or engage in same-sex sexual behaviour.¹ Given the growing number of Australians who identify as LGBTIQA+,² the need in our communities for specialist, peer-led, funded legal assistance is longstanding and well-established in the literature. The Law Council of Australia's 2020 Justice Project report emphasised this need in its recommendation that:

*State and territory governments should support, fund and expand specialist LGBTI+ legal services. Funding for these services should recognise the importance of supporting services to engage in both advocacy and CLEI efforts, as both are essential to achieving access to justice for this group. Commonwealth, state and territory governments should invest in public awareness campaigns as an important means of overcoming discrimination and marginalisation of this group within the broader community.*³

We note that the Justice Project final report also identified thirteen key priority demographics for specialist funded legal assistance, which included Aboriginal and Torres Strait Islander peoples, people at risk of domestic violence, and LGBTIQA+ communities.⁴ Under the current NLAP, eleven of these population groups receive specific, targeted funding for specialist legal assistance to support the needs of those people and communities. While LGBTIQA+ populations are well-established in the literature as benefiting from specific, targeted legal assistance, these specialist services are largely not funded under the current NLAP (with the exception of NSW-based RACS and ICLC, though these have become the default providers of legal assistance for LGBTIQA+ NSW residents and are not properly resourced to provide a statewide service).⁵

Moreover, current funding agreements are insufficient to meet the demands of existing specialist services and leave significant service gaps and shortfalls throughout the country. Adequate resourcing continues to be a barrier to attraction and retention of staff, community engagement and building of referral pathways, legal service delivery and other core operations, administrative and operational support, necessary systems advocacy, and the production of community legal education and information resources.

Understanding the needs and experiences of LGBTIQA+ people

LGBTIQA+ people and communities are not homogenous or monolithic. Our communities have distinct but overlapping experiences, needs and interests. Successful resolution of the legal,

¹ Rainbow Health Victoria (2020) [Research Matters: How many people are LGBTIQ?](#) [PDF], Rainbow Health Victoria, 4.

² Rainbow Health Victoria (2020) [Research Matters: How many people are LGBTIQ?](#) [PDF], Rainbow Health Victoria, 4.

³ Law Council of Australia (August 2018) [The Justice Report, Introduction and Overview](#), Law Council of Australia, 20.

⁴ Law Council of Australia (August 2018) [The Justice Report, Introduction and Overview](#), Law Council of Australia, 1.

⁵ see further Inner City Legal Centre, Submission to the Independent Review of the National Legal Assistance Partnership, October 2023.

social and administrative problems faced by the different groups under the broader LGBTIQ+ umbrella requires distinct knowledge, lived experience and legal expertise which is specific to those groups and identities, and which can only be delivered by peer-led services.

Likewise, LGBTIQ+ people come from all walks of life: we are all ages and genders, and represent all religions, cultures and economic backgrounds. Some of us are Indigenous Australians, some of us are refugees or asylum-seekers, some of us live with disability or mental ill-health, and some of us are retired while others are still in school. LGBTIQ+ people may face complex forms of marginalisation and stigma due to the intersection of these identities and vulnerabilities. Effective responses to the social and legal problems that arise from this compounding, intersecting disadvantage frequently requires holistic, complementary legal, social, health and cultural supports.⁶ Peer-led LGBTIQ+ support organisations have a longstanding history of collaboration and mutual support, and of being embedded in and responsive to their communities.

We also emphasise that while our communities on average have poorer legal, health and wellbeing outcomes than our heterosexual and cisgender peers,⁷ these poor outcomes are not inherent or intrinsic to our identities or our relationships. These outcomes are rather the inevitable consequence of historic systems of injustice, cultural marginalisation, and “queerphobic, cis-heteronormative/sexist systems pathologising queer life and identities”.⁸ The ongoing social and legal needs of our communities will be discussed in greater detail below.

Historical and ongoing injustice

The ongoing legal needs of our communities are positioned in a historical context of systemic injustice. While significant social progress and legislative reforms have been and continue to be made (often driven by the advocacy of specialist LGBTIQ+ community legal centres, health services and other community agencies), until recently many aspects of LGBTIQ+ lives, experiences, relationships, or identities were criminalised, penalised, administratively burdensome, and not afforded full protections under the law. For example:

- it was not until 2013 that all Australian jurisdictions protected against discrimination due to intersex status, sexuality, or gender identity;
- until 2017, marriages between same-sex couples were not legally recognised in Australia;
- it was not until 2017 that all Australian jurisdictions legally permitted same-sex couples to adopt children;
- the ‘gay panic’ defence for assault or homicide was still a valid defence in South Australian courts until 2021;
- until this year, transgender or intersex Queenslanders could only amend their identity documents if they had undergone sex reassignment surgery. In New South Wales this is still a requirement; and
- this year, the Australian Capital Territory become the first and only Australian jurisdiction to enshrine legislative protections for the bodily autonomy of intersex infants.

⁶ McDonald H and Wei Zhigang (2016) ‘How people solve legal problems: level of disadvantage and legal capability’, *Justice Issues*, 23: 10.

⁷ Hill et al. (2020) ‘Private Lives 3: The health and wellbeing of LGBTIQ people in Australia’, *ARCSHS Monograph Series* 122, Australian Research Centre in Sex, Health and Society, La Trobe University.

⁸ Lucas J et al (2023) ‘When primary healthcare meets queerstory: community-based system dynamics influencing regional/rural LGBTQ+ people’s access to quality primary healthcare in Australia’, *BMC Public Health*, 23(387):1, doi:10.1186/s12889-023-15289-4.

These historic injustices not only create ongoing, unresolved legal and social complications for community members, but also often lead to mistrust towards policing, legal systems, health care providers and government agencies. LGBTIQ+ Australians may feel that legal systems have not historically responded to our needs or protected our interests (and may in fact have been explicitly discriminatory or punitive), which can lead to a reluctance to address legal issues, engage with legal processes, or seek legal assistance. For example:

- Private Lives 3 found that 72% of respondents who experience domestic and family violence told no-one;⁹ and
- the Speaking Out study found that 75% of respondents did not report recent experiences of homophobic or transphobic abuse to police or seek professional assistance.¹⁰

Accessible, welcoming, community-led and embedded legal services are necessary to ensure that our communities have culturally safe and accessible pathways to legal assistance, and do not face unnecessary access to justice barriers.

We also note that legislative reform which corrects historic injustice is rarely 'the end of the legal story' for impacted communities and individuals. Meaningfully asserting newly-enshrined rights or accessing new systems or legal processes often requires specialist, tailored legal advice or assistance – for example, to adopt a child, amend your identification documents, or to end a marriage. Further, attempts to right legislative wrongs which have historically discriminated against or disadvantaged LGBTIQ+ people (while necessary and long overdue) tend to be deficient because of a lack of reference to lived experience, and a narrow scope of community consultation. For this reason, it is vital that CLCs and specialist LGBTIQ+ services receive adequate funding which allows them to also engage in meaningful and productive advocacy work alongside providing baseline services.

⁹ Hill et al. (2020) 'Private Lives 3: The health and wellbeing of LGBTIQ people in Australia', *ARCSHS Monograph Series* 122, Australian Research Centre in Sex, Health and Society, La Trobe University, 75.

¹⁰ Berman A and Robinson A (2010) *Speaking out: stopping homophobic and transphobic abuse in Queensland*, Australian Academic Press, Bowen Hills.

Case Study: Consultation and Law Reform

A compelling example of law reform failing to meet community expectations or adequately respond to legal need is the expungement scheme passed by the Queensland Parliament in 2017 under the Criminal Law (Historical Homosexual Convictions Expungement) Act 2017 ('Expungement Act').

The passing of the Expungement Act represented a critical step towards removing stigma experienced by the LGBTIQ+ community in Queensland, who faced ongoing stigma and legal or administrative consequences due to historical laws which criminalised a variety of LGBTIQ+ identities, relationships and same-sex sexual activities. However, the specific drafting of the Expungement Act took a limited approach, which did not consider the lived experiences of many community members, nor the complex framework of offences under which they had been convicted. This has led to many community members either failing to access the scheme, being unsuccessful in their attempts to access the scheme, or requiring specialist legal information, advice and assistance. As of February 2023, "only a handful" of people had accessed the scheme.

The LGBTILS prepared submissions to advocate for expungement legislation to be introduced in 2015, to suggest amendments to the draft bill for the legislation in 2017, and to call for law reform to the Expungement Act in 2023. LGBTILS was not specifically funded to perform this type of advocacy, and the preparation of submissions and other engagement with reform mechanisms represented a significant investment of LGBTILS' time and resources, including through its pro bono partners. Had community-led advocacy been appropriately funded and involved in the legislative reform from the outset, the Act may have more appropriately responded to the needs of our communities, and more comprehensively engaged with the breadth of systemic injustice.

The Expungement Act also represents a valuable example of legislative reform not being 'the end of the legal story'. Following the passage of the Act, LGBTILS assisted a number of applicants seeking to have their historical offences expunged. The Service's work in this space highlights the clear shortfalls in the legislative drafting which informed our 2023 submissions. Despite the assistance and involvement of experienced solicitors, all but one of the applications prepared by the LGBTI Legal Service were refused. This demonstrates that the 'legal story' for those applicants not only continued, but that the legislative reform also had limited positive impact on righting the historical injustice they suffered.

Prevalence of legal problems within LGBTIQ+ communities

Peer-led LGBTIQ+ legal assistance services are by their nature ‘specialist-generalist’ services: we provide legal support which covers a broad range of legal problem types, but we have a specialist knowledge and well-developed practical understanding of the lives and experiences of our communities, and by extension our clients. We provide services which are culturally-safe, trauma-informed and responsive to the specific needs of our clients.

The types of legal problems experienced by LGBTIQ+ individuals and communities are inseparable from their broader social context and are largely a consequence of our experiences moving through cis-normative, heterosexist systems and cultures.¹¹ A large number of legal problem types are either specific to LGBTIQ+ clients or are otherwise significantly impacted by that clients’ gender identity, sexuality or intersex status. As such, these types of legal problems require specialist, targeted, peer-led legal assistance to ensure a response which is appropriate, effective, trauma-informed and meets the needs of our communities.¹² For example, legal issues related to gender transition or homophobic harassment are unique to our communities, and not experienced by our heterosexual and cisgender peers.

A recent LGBTIQ+ community survey conducted by the LGBTI Legal Service found that 61% of respondents had experienced at least 1 type of legal problem in the last 12 months. Out of those who did experience a legal problem, 64% experienced at least 2 or more types of legal problems.

Beyond these issues specific to our communities, there are also a significant number of broader legal problem types which require specialist experience and sensitivities to effectively resolve.

Victims of crime

Victims of crime complaints, particularly in response to violence, sexual violence, harassment or abuse, are frequent within our communities. The most common forms of harassment faced by LGBTIQ+ Queenslanders include verbal and written abuse, threats of physical violence, physical attack, sexual assault and property damage.¹³ Transgender people in particular report significant rates of violence and harassment: 92% of transgender women and 55% of transgender men reported verbal abuse; 46% of transgender women and 36% of transgender men reported physical attacks without a weapon; and 38% of transgender women and 9% of transgender men reported physical attacks with a weapon.¹⁴

Family law

The demand for family law assistance within LGBTIQ+ communities is rapidly increasing.¹⁵ While much of this demand is a consequence of same-sex marriages becoming legal in 2017, our service is also experiencing significant increased demand for family law advice relating to reproductive technologies and surrogacy, parenting planning and child support or child contact

¹¹ Hill A et al. (2022) ‘Violence, abuse, neglect and exploitation of LGBTQ+ people with disability: a secondary analysis of data from two national surveys’, Australian Research Centre in Sex, Health and Society, La Trobe University.

¹² Law Council of Australia (August 2018) [The Justice Report, Introduction and Overview](#), Law Council of Australia, 4.

¹³ Dwyer A, (2012) ‘Review of ‘Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland’, *Queensland University of Technology Law and Justice Journal*, 12(2): 115-119.

¹⁴ Australian Human Rights Commission (2011) *Stories of discrimination, vilification and harassment - Addressing sexual orientation and sex and/or gender identity discrimination: Consultation Report*

¹⁵ Law Council of Australia (August 2018) [The Justice Report, LGBTI+ People](#), Law Council of Australia, 17.

arrangements, and property matters relating to family law.¹⁶ Roughly one third of all assistance sought by people accessing LGBTILS in the past financial year relates to family law.

Domestic and family violence

Domestic and family violence are not unique to our communities. The Victorian Royal Commission into Family Violence noted that intimate partner violence is as prevalent in LGBTI+ communities as it is in the general population.¹⁷ In the most recent *Private Lives* study into LGBTIQA+ health and wellbeing, 33% of respondents reported an experience of intimate partner violence.¹⁸ Transgender and intersex people are especially at risk of family violence, particularly from parents.¹⁹ In 2022-23, 59% of people seeking assistance from LGBTILS reported an experience of domestic or family violence.

Our communities' experiences of domestic and family violence often include an element of stigma, shaming, homophobia or gender essentialism, and abuse is often perpetuated due to internalised stigma and perceived lack of access to appropriate supports.²⁰ Mainstream support services are often unresponsive to the specific sensitivities and dimensions of intimate partner violence in queer relationships, leading to many LGBTIQA+ people with an experience of violence requiring specialist, peer-led support.

Discrimination

Discrimination and vilification continue to be key areas of legal need for LGBTIQA+ people, with 25% of respondents to a 2015 Australian Human Rights LGBTIQA+ community consultation reporting that they had experienced refusal of service based on their sexuality or gender identity. This consequently leads to significant demand on our services to provide advice and assistance for those who have experienced discrimination in the following areas:

- **Employment:** Unjust discrimination in the workplace and during recruitment continues to be a concern for LGBTIQA+ Australians. One in six people who identify as gay or lesbian,²¹ and one in three people who identify as trans,²² report an experience of workplace discrimination. Our communities have higher rates of unemployment than the general population and face significant barriers during the recruitment process.²³ LGBTILS' recent LGBTIQA+ community survey found that of the respondents who experienced an

¹⁶ Fitzroy Legal Service (2016), *Submission No 21 to the Victorian Department of Justice and Regulation, Access to Justice Review*, 10.

¹⁷ Royal Commission into Family Violence (2016) *Royal Commission into Family Violence, Report and Recommendations*, report prepared by Neave AO M et al, Volume 5, No 132, 143-144.

¹⁸ Hill et al. (2020) 'Private Lives 3: The health and wellbeing of LGBTIQ people in Australia', ARCSHS Monograph Series 122, Australian Research Centre in Sex, Health and Society, La Trobe University, 51-52.

¹⁹ Royal Commission into Family Violence (2016) *Royal Commission into Family Violence, Report and Recommendations*, report prepared by Neave AO M et al, Volume 5, No 132, 145.

²⁰ Cabral J and Pinto TM (2023) 'Gender, Shame, and Social Support in LGBTQI+ Exposed to Discrimination: A Model for Understanding the Impact on Mental Health', *Social Sciences* 12(8):454, doi:10.3390/socsci12080454.

²¹ Australian Human Rights Commission (2015) [Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights, National Consultation Report](#) [PDF], Australian Human Rights Commission, 19.

²² Bretherton I et al. (2021) 'The Health and Well-being of Transgender Australians: A National Community Survey', *LGBT Health* 8(1): 42-49, doi: 10.1089/lgbt.2020.0178.

²³ Meridian et al. (2021) [Removing barriers to employment for LGBTIQA+ people: Understanding the role of employment services.](#)

- employment law problem, 75% did not access any legal support for their problem.
- **Healthcare:** Stigma, abuse and discrimination in healthcare are widely reported within our communities, particularly by trans, intersex and gender diverse people. Over one quarter of trans people have experienced discrimination in a healthcare setting,²⁴ and many trans people feel they do not receive appropriate ongoing healthcare due to “the need to educate health professionals who do not understand trans issues”.²⁵ In our recent LGBTIQ+ community legal needs survey, approximately 20% of respondents indicated that they had experienced discrimination in healthcare in the past 12 months. None of those respondents indicated that they had accessed legal support for their problem.
 - **Housing and homelessness services:** LGBTIQ+ people are overrepresented in homelessness populations. Sexuality and gender are one of the largest causes of youth homelessness in Australia, with two in five young people experiencing homelessness also identifying as LGBTIQ+.²⁶ Our communities face discrimination in tenancy applications and within share houses,²⁷ and may face barriers to accessing housing support or crisis accommodation services (particularly with concerns about real or perceived discrimination from faith-based providers).²⁸
 - **Sport and community organisations:** Four out of five respondents to a recent Australian community survey believed that lesbian, gay and bisexual athletes are either ‘not accepted, accepted a little or only moderately accepted in sport’.²⁹ Intersex athletes continue to face unique discrimination in sport, including being made to comply with invasive medical investigations while competing.³⁰

Vilification and harassment

The findings of the Trans Justice Project’s 2023 *Fueling Hate Report*³¹ also paint a stark picture of the prevalence of harassment and violence against trans people. The Report revealed that 94.55% of all survey participants reported seeing online anti-trans hate in the past year, and one in two transgender participants were the victim of anti-trans hate. Anti-trans hate is also intensifying, particularly in online spheres with the spread of disinformation. The Report found that compared to 2020, 85% of participants saw **significantly more** online anti-trans abuse, harassment or vilification, and 39% saw **more or significantly more** in-person anti-trans abuse, harassment or vilification. The Report notes that this amplification has been preceded by several

²⁴ Bretherton I et al. (2021) 'The Health and Well-being of Transgender Australians: A National Community Survey', *LGBT Health* 8(1): 42-49, doi: 10.1089/lgbt.2020.0178.

²⁵ Riggs DW and Due C (2014) 'Gender Identity Australia: The Health Care Experiences of People whose Gender Identity Differs from that Expected of the Natally Assigned Sex,' *School of Social and Policy Studies*, Flinders University; Moore E (2015) [Submission 21 to the Australian Human Rights Commission](#), National SOGII Consultation.

²⁶ Hail-Jares K et al. (2021) 'Queer homelessness: the distinct experiences of sexuality and trans-gender diverse youth', *Journal of LGBT Youth*, doi: 10.1080/19361653.2021.1990817.

²⁷ Andrews C and McNair R (2020) [LGBTIQ+ Inclusive Practice Guide for Homelessness and Housing Sectors in Australia](#), National LGBTI Health Alliance, The University of Melbourne.

²⁸ Andrews C and McNair R (2020) [LGBTIQ+ Inclusive Practice Guide for Homelessness and Housing Sectors in Australia](#), National LGBTI Health Alliance, The University of Melbourne.

²⁹ Denison E and Kitchen A (2015) [The Out on the Fields Report](#) [PDF].

³⁰ Intersex Human Rights Australia (10 March 2017) [Darlington Statement](#), *Intersex Human Rights Australia*, accessed 27 October 2023.

³¹ Trans Justice Project and Victorian Pride Lobby (2023) [Fuelling Hate Report: Abuse, Harassment, Vilification and Violence Against Trans People in Australia](#), Trans Justice Project and Victorian Pride Lobby.

key events, including public discourse around the Safe Schools program, the marriage equality postal survey, an increase in anti-trans disinformation in media and anti-trans lobbying and politics.

Administrative problems

Many clients access our service seeking assistance to navigate administrative systems and government processes which are not designed to accommodate LGBTIQ+ people. In particular, our service regularly advises trans, gender diverse and intersex people who wish to change their legal identity documents, and with other administrative processes regarding gender identity, gender transition, and access to gender-affirming care.

Many court forms, online portals and other processes, particularly as they relate to family law, also exclude genderqueer and gender diverse people due to systems which are rigid and do not offer alternatives to the gender binary.³² Similarly, the parents of transgender and intersex children often require advice relating to school enrolments, identity documents, and other medico-legal processes relating to gender transition.³³

Intersex people have particular legal needs related to medical interventions performed in early childhood, including genital 'normalisation' procedures, sterilisation procedures and hormone treatments. Intersex Human Rights Australia note the importance of early peer support, legal advice and access to information for parents of intersex children.³⁴ Additionally, many transgender and intersex clients require assistance to access hospital records, or to challenge improperly made decisions.

Case Study: Siti

RACS represented Siti* a lesbian woman from Malaysia. The Department of Immigration had interviewed her, finding 'credibility concerns' about aspects of her story, and also found that lesbians as a group would not be at risk of persecution in Malaysia.

With representation from RACS' SOGIESC specific service, at the Administrative Appeals Tribunal, the decision maker found that because of Siti's masculine presenting appearance, she would be visibly identifiable as a lesbian, and at risk of serious harm amounting to persecution on that basis.

The Tribunal agreed with RACS' submissions that requiring her to modify aspects of her appearance or behaviour was an incorrect understanding of the definition of a refugee.

³² Law Council of Australia (2018) [Submission to the Australian Law Reform Commission](#), Review of the Family Law System – Issues Paper 48, 31.

³³ Law Council of Australia (August 2018) [The Justice Report, LGBTI+ People](#), Law Council of Australia, 19-20.

³⁴ The Royal Children's Hospital Melbourne (n.d) [Gender Service](#), The Royal Children's Hospital Melbourne website, accessed 27 October 2023.

2) An evaluation of the effectiveness and challenges of service delivery

The importance of specialist, peer-led services

As discussed above, specialist legal support for LGBTIQ+ Australians is difficult or impossible to access in many jurisdictions, particularly in regional, rural and remote Australia. LGBTIQ+ people often face complex and specific legal and social needs which benefit greatly from specialist, targeted, peer-led assistance.³⁵ It is well established in literature that the specific needs of LGBTIQ+ clients may not be appropriately serviced by mainstream organisations,³⁶ and that many potential clients choose not to seek assistance in the absence of appropriate and accessible specialist services.³⁷

LGBTIQ+ people are often unsure whether mainstream legal and non-legal service providers will be welcoming, informed about specific issues relating to gender or sexuality, or otherwise provide service which is appropriate and sensitive to their needs - this may dissuade a person experiencing personal or legal problems from taking action or from seeking assistance.³⁸ Many LGBTIQ+ people have experienced poor outcomes, homophobia or ignorance from mainstream services,³⁹ and may not feel comfortable to disclose sensitive personal information when accessing mainstream services (even where this disclosure is relevant to the resolution of their problem).⁴⁰

Australian research and community consultations have identified that the language, terminology and jargon used by mainstream services and government departments can be 'alienating' for LGBTIQ+ people and noted among mainstream services a "lack of LGBTI-friendly and community-specific material and information, particularly in relation to transgender and intersex information and services."⁴¹

It is well-established in literature that specialist, peer-led legal assistance services provide greater benefit to their clients than mainstream services due to:

- an in-depth knowledge of the backgrounds and experiences of target client groups;
- an understanding of the kinds of problems they commonly experience;
- specialist experience in addressing their most common barriers to seeking legal help; and
- a well-developed best-practice response.⁴²

Mainstream legal assistance services are unlikely to be culturally accessible, or meaningfully responsive, to many of the legal problem types faced by LGBTIQ+ clients, particularly those that relate to families and relationships, identity and identity documents, discrimination and vilification on the basis of sexuality or gender, or human rights.

³⁵ Law Council of Australia (August 2018) *The Justice Report, LGBTI+ People*, Law Council of Australia, 4.

³⁶ Andrews C and McNair R (2020) *LGBTIQ+ Inclusive Practice Guide for Homelessness and Housing Sectors in Australia*, National LGBTI Health Alliance, The University of Melbourne.

³⁷ Lusby S et al. (2022) *Opening doors: Ensuring LGBTIQ-inclusive family, domestic and sexual violence services*, Australian Research Centre in Sex, Health and Society, La Trobe University.

³⁸ Fileborn B (2012) *Sexual violence and gay, lesbian, bisexual, trans, intersex, and queer communities*, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies.

³⁹ Berman A and Robinson A (2010) *Speaking out: stopping homophobic and transphobic abuse in Queensland*, Australian Academic Press, Bowen Hills.

⁴⁰ LGBTI Legal Service (2017) *23/08/2017 Justice Project consultation*, Brisbane.

⁴¹ Department of Communities (2012) *Engaging Queenslanders: A guide to working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) communities*, Queensland Government, Department of Communities.

⁴² Castles M (2019) 'Possibilities for multidisciplinary collaboration in clinical practice: practical ethical implications for lawyers and clients', *Monash University Law Review* 34(1): 123.

LGBTIQ+ people experience disproportionate legal need and face specific barriers accessing mainstream services. Research from the health and social services sectors^{43 44 45} have found that LGBTIQ+ people in particular benefit greatly from specialist, peer-led support for a variety of reasons:

- the service's expertise with LGBTIQ+ specific issues and their quality of specialised service delivery;
- the client's increased feelings of cultural safety, being understood, and being welcomed and valued;
- well-established referral pathways and collaborative services to provide holistic, multidisciplinary, person-centric support;
- reduced fear and anxiety for clients to disclose information or to be honest about personal circumstances; and
- a greater willingness and opportunity for clients to contribute to service improvement and consultations.

The preference for and importance of peer-led support is demonstrated by data collected through the LGBTILS' intake form, which asks potential clients "*Why are you approaching the LGBTI Legal Service?*" Some of their responses include:

- *"We feel safer with lawyers from the community, and I think we would benefit with specific experience."*
- *"...I have found traditional legal services lacking in knowledge about intersectional and queer human rights issues..."*
- *"Feel their issues would be better addressed by a lawyer with specific LGBTI experience. Feel more safe and comfortable using culturally-safe services"*
- *"A service that understands needs of transgender young people"*
- *"Due to not feeling safe reaching out to other services for not being listened to"*
- *"To speak with someone who is understanding and empathetic to others within the community"*
- *"I would prefer a legal service which understands the issues I face regarding my gender and sexuality - without judgement"*
- *"I feel more comfortable knowing my sexuality won't be an issue when talking about my separation and child support issues"*
- *"For a safe and inclusive service that understands lived experience and marginalisation"*
- *"Need an LGBTQ+ friendly/experienced lawyer due to not feeling safe with non-LGBTQ+ legal services"*
- *"I feel safe speaking to someone from LGBTQIA+ service and like I will be understood"*

The need for holistic, joined-up and collaborative services

Health-justice partnerships, multi-disciplinary practices, and other collaborative service models are becoming more widespread in the legal assistance sector⁴⁶ due to an increased understanding that legal problems are inseparable from their underlying social, familial, health

⁴³ Department of Health (2021), [Community health pride: A toolkit to support LGBTIQ+ inclusive practice in Victorian community health services](#), State of Victoria, Department of Health.

⁴⁴ Department of Communities (2012) *Engaging Queenslanders: A guide to working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) communities*, Queensland Government, Department of Communities.

⁴⁵ Molyneux A et al. (2021) [It's Who We Are: Exploring the Role, Impact and Value of Peers](#) [PDF], ACON.

⁴⁶ Trubeck LG (2000), *How to Create and Sustain a Successful Social Justice Collaborative*, 5.

and financial concerns.⁴⁷ People with complex, intersecting forms of marginalisation and disadvantage are only likely to appropriately resolve their legal problems through holistic, collaborative legal and nonlegal interventions.⁴⁸

LGBTIQ+ people in particular will disproportionately face complex, intersecting forms of disadvantage and stigma, which will benefit from complementary legal and nonlegal interventions:

- 75% of LGBTIQ+ young people in Australia have experienced abuse or harassment on the basis of their sexuality or gender identity;⁴⁹
- family rejection due to sexuality and gender identity is the largest driver of youth homelessness in Australia.⁵⁰ LGBTIQ+ young people who have experienced homelessness are at a higher risk than their cisgendered and heterosexual counterparts of bullying at school and school refusal, poorer mental health, experiences of trauma and childhood abuse, substance abuse issues, engaging in survival sex, and multiple, longer periods of homelessness.⁵¹
- LGBTIQ+ women have on average poorer health and wellbeing outcomes than their heterosexual and cisgender peers across indicators such as healthcare satisfaction, global health status, community engagement, and general health status;⁵²
- a recent survey of LGBTIQ+ communities conducted by the LGBTILS found that 37% of respondents had an income which placed them below the poverty line;
- our communities have higher rates of suicidality and suicide attempts, with bisexual people being six times more likely, and transgender and intersex people being five times more likely, to attempt or idealise suicide than their heterosexual, cisgender and non-intersex peers;⁵³
- LGBTIQ+ people are two and a half times more likely to be treated for or diagnosed with a mental health condition;⁵⁴
- rates of HIV and AIDS are significantly higher in our communities than the broader population, particularly among men who have sex with men.⁵⁵ People living with HIV may seek legal advice relating to disclosure of HIV status, employment, travel and migration, discrimination, and harassment or vilification; and
- transgender and/or male sex workers face higher rates of violence from partners and clients, and report high rates of unresponsiveness, harassment and vilification by police

⁴⁷ Health Justice Australia (2018) [The rationale for health justice partnership](#) [PDF], Health Justice Australia.

⁴⁸ Walsh T (2012) 'Lawyers and Social Workers Working Together: Ethic of Care and Feminist Legal Practice in Community Law' *Griffith Law Review* 21(3): 752-771.

⁴⁹ Aurora and GiveOUT (2022) [Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia](#), 12.

⁵⁰ McNair et al. (2017) *Stage 1 Report, LGBTI Homelessness: Preliminary findings on risks, service needs and use* [PDF], GALFA LGBTI Homelessness Research Project, 13.

⁵¹ McNair et al. (2017) *Stage 1 Report, LGBTI Homelessness: Preliminary findings on risks, service needs and use* [PDF], GALFA LGBTI Homelessness Research Project, 6.

⁵² Mooney-Somers J et al. (2020) [Women in contact with the Sydney LGBTIQ communities: Report of the SWASH Lesbian, Bisexual and Queer Women's Health Survey 2016, 2018, 2020](#) [PDF], Sydney Health Ethics, University of Sydney, 2.

⁵³ LGBTIQ+ Health Australia (2021) [Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People](#) [PDF], 2.

⁵⁴ LGBTIQ+ Health Australia (2021) [Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People](#) [PDF], 5.

⁵⁵ Cornelisse V J et al. (2016) 'Optimising healthcare for men who have sex with men: A role for general practitioners' *Australian Family Physician* 45(4).

after reporting a crime.⁵⁶

It is vital that specialist LGBTIQ+ legal services collaborate with, are embedded in, and have strong working relationships with and referral pathways from specialist LGTBIQA+ community and health services. Part of being sensitive to and aware of the interconnectedness of a client's legal and nonlegal problems is an understanding that other services (such as health workers, social workers, peer advocates or counsellors) will often be better positioned to address them.⁵⁷

Mainstream services frequently find it difficult to meet the needs of LGBTIQ+ clients and families, and lack the specialist training, organisational processes, or lived experience to effectively assist our communities. A 2011 analysis of NSW domestic violence support services found that of existing service providers, only 18% rated themselves as 'fully competent' to work with gay or lesbian people, nearly 8% rated themselves as 'fully competent' to work with transgender clients and 5% rated themselves 'fully competent' to work with intersex clients. A respondent to our recent LGBTIQ+ community legal needs survey reported that:

"There is no LGBTQI supports and the non-LGBTQI supports do not take IPV seriously. Especially between two women. I reported it to the police and they never got back to me."

Specialist LGBTIQ+ services also strengthen and build capacity within mainstream services in their networks, through training, referral pathways, research and education projects, collaborations and secondary consultations. Our services' relationships and collaborations, advocacy and education projects enhance the broader legal assistance sector's capacity to respond to LGBTIQ+ community needs more safely and effectively.

Current funding models do not promote the delivery of collaborative, person-centered, holistic services. Appropriately funded specialist services for LGBTIQ+ communities should extend beyond legal service delivery, to either deliver embedded social work or peer support programs, or to allow appropriate opportunities for partnership-building, collaboration, and joined-up service delivery with existing specialist health and social support services.

Broader funding challenges in the LGBTIQ+ sector

Under current funding agreements, there are no funds allocated by the Commonwealth to specialist LGBTIQ+ legal assistance services throughout Australia. Overreliance on funding from one level of government comes with significant risks in the event of changing political preferences and policy priorities.

As an example, the LGBTILS received no government funding from the Commonwealth or Queensland governments for the first seven years of its existence, and its statewide operations from 2010-17 were entirely supported by donations, volunteering and pro bono support. Currently, approximately 80% of the Service's operational budget is delivered through state funding, with the remainder made up of donations.

A reliance on State funding to comprise the bulk of operational costs is troublesome for several reasons:

- specialist LGBTIQ+ legal services frequently advocate for law and systems reform at the State level, creating tension that this advocacy may jeopardise future funding;

⁵⁶ Jones J et al. (2018) [Factors influencing transgender and male sex worker access to sexual health care, HIV testing and support study \(TaMS\) report](#) [PDF], Respect Inc, 59.

⁵⁷ Trubeck LG (2000), *How to Create and Sustain a Successful Social Justice Collaborative*.

- changes of government at the State level (or changing policy priorities of existing governments) can alter funding agreements and create shortfalls which may jeopardise service continuity and continuity-of-care for clients. As an example from the health and community sector, in 2012 the Queensland Association for Healthy Communities (a LGBTIQ+ health and advocacy service) unexpectedly lost almost all funding following a change of government, requiring the organisation to cease the majority of its operations;
- legal problems frequently experienced by LGBTIQ+ clients will sometimes fall under the jurisdiction of the State (healthcare, tenancy, criminal law, human rights), the Commonwealth (family law, social security) or both (identity documents and other administrative aspects of gender transition). It is appropriate that the financial investment in services to help navigate these legal problems is funded commensurately by the Commonwealth Government.

The frequent reliance on donations and volunteering to compensate for funding shortfalls also leaves specialist LGBTIQ+ legal services in a perilous position. Historically, people who identify as LGBTIQ+ have been less affluent and have had less access to generational wealth than our cisgender and heterosexual peers (due to a combination of discriminatory employment practices and lack of family acceptance),⁵⁸ and as such have less capacity for philanthropic giving.

Across the broader LGBTIQ+ community and health sectors, funding has historically been scarce, and funding considerations continue to significantly impact operational planning and service continuity.⁵⁹

- only 0.2% of all registered charities in Australia have LGBTIQ+ communities as their primary beneficiary, and only another 2.8% acknowledge LGBTIQ+ communities as a specific group that they serve;
- between 2019-2021, only 0.3% (\$1m out of a recorded \$350m) of funding mapped by Philanthropy Australia was found to contribute to LGBTIQ+ specific projects;
- 39% of LGBTIQ+ community organisations operate on a budget of less than \$10,000 per year;
- registered LGBTIQ+ organisations receive just 5 cents out of every \$100 received by Australian charities;
- when asked to list key challenges to serving LGBTIQ+ communities, 'Funding to do our work' was selected by more than two thirds of respondents as a challenge and by 49% - almost half - as their 'key challenge'. Three quarters of respondents said they faced barriers to finding funding and around the same number (77%) said they faced barriers to applying for funding;
- in total, 80% of LGBTIQ+ organisations had five or fewer paid staff (including organisations that had no paid staff).

These funding challenges have been exacerbated recently due to increased demand. This demand largely results from an increased pressure on LGBTIQ+ communities due to a rise in homophobic abuse and violence, growing vocal political opposition to our communities, and an

⁵⁸ White J et al. (2020) *Understanding the Well-Being of LGBTIQ+ Populations*, National Academies of Sciences, Engineering, and Medicine, The National Academies Press, Washington DC.

⁵⁹ Aurora and GiveOUT (2022) [Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia.](#)

increased politicisation of our lives, families and identities.^{60 61} In a recent survey, 72% of LGBTIQ+ community organisations reported that they had experienced an increase in demand over the past 12 months, yet 33% said they ceased delivering a service or program due to lack of funding.⁶² During this period, 41% of LGBTIQ+ organisations who provide services to clients reported that they could only ‘rarely’ (13%) or ‘sometimes’ (28%) meet demand for their services, with only 11% of organisations reporting that they could meet demand for their service ‘all of the time’.⁶³

This broader underfunding of LGBTIQ+ community organisations means that community legal services often ‘pick up the slack’ of service provision, and have fewer opportunities for collaborative services, developing referral pathways, professional development or secondary consults. Many specialist LGBTIQ+ legal services also become de facto referral pathways for a variety of legal and non-legal problems due to a lack of other appropriate services, which creates further resourcing and capacity constraints.

Minimum funding for effective service delivery

As discussed above, LGBTIQ+ people in many parts of the country have no genuine access to specialist, peer-led legal support. A lack of coordinated nation-wide funding leaves significant service gaps – in the experiences of our organisations, this sometimes leads to enquiries from prospective clients who live interstate, and referrals from interstate community and health organisations to ‘fill the gaps’ where appropriate local services are not available. These referrals are often inappropriate, and community legal centres are frequently limited in the scope of assistance they can provide in response to interstate enquiries (due to a combination of jurisdictional considerations, professional licensing, and service funding constraints). This leads not only to poor outcomes for prospective clients, but to resources which are already limited being burdened even further.

The tenuous and inadequate state of funding for specialist LGBTIQ+ legal assistance throughout Australia creates ongoing challenges within our organisations, with funding often beholden to state government’s political agendas and policy priorities. Our uncertain and unpredictable funding horizons significantly restrict service planning, staff retention, and the capacity to engage in long-term, forward-looking community engagement, research or project planning.

The lack of surety in ongoing funding leads to considerable service delivery barriers and organisational risk, whereas more robust and reliable funding frameworks have been recognised in literature as providing a number of benefits to organisations and their clients:

- more positive client health and wellbeing outcomes, and reduced risk of service discontinuation or disruption;⁶⁴

⁶⁰ Medina C and Mahowald L (12 January 2023) [‘Discrimination and Barriers to Well-Being: The State of the LGBTIQ+ Community in 2022’](#), *American Progress*, accessed 27 October 2023.

⁶¹ Ellis J (4 July 2023) [‘Our hybrid media system has emboldened anti-LGBTQ+ hate – what can we do about it?’](#), *Hippocampus*, accessed 27 October 2023.

⁶² Aurora and GiveOUT (2022) [Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia](#), 5.

⁶³ Aurora and GiveOUT (2022) [Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia](#), 28.

⁶⁴ Mental Health Australia (2015) [Discussion Paper: Options for commissioning and funding of mental health services](#) [PDF], Mental Health Australia.

- improved recruitment and retention of appropriate staff,⁶⁵ improved staff health and wellbeing, and reduced risk of burnout;⁶⁶
- the deepening of staff expertise and institutional knowledge, and the development of responsive organisational policies and practices;
- the opportunity for forward-looking, proactive service planning and ongoing projects;
- the building of trust within local communities, and deepening rapport with and engagement from community groups and organisations;
- building of reputation and relationships within LGBTIQ+ health and wellbeing organisations and developing trusted working relationships and referral pathways.

We note that the most responsive approach to service delivery throughout the country would create funding for multiple collaborative and mutually-supportive specialist LGBTIQ+ assistance services within each Australian state and territory. It is important to have a breadth of specialist services, as community legal centres have few resources and practical avenues to manage conflicts-of-interest between two prospective clients, other than simply denying service entirely to one party. In the experience of our organisations, the lack of alternative specialist legal support services within any jurisdiction can result in few appropriate referral pathways in the case of conflicts, and subsequently a lack of meaningful access to justice for some LGBTIQ+ community members.

Regional, rural and remote considerations

The particular challenges, service gaps and lack of community resources faced by LGBTIQ+ Australians living in rural, regional and remote areas is well-established in literature.⁶⁷ LGBTIQ+ people living outside of metropolitan centres are less likely to have access to specialist health services or community organisations, more likely to face stigma and discrimination, less likely to have access to supportive communities and peers, and more likely to experience mental health concerns.⁶⁸ Presently, there are no specialist LGBTIQ+ legal assistance services located outside of a State capital.

Although the existing specialist LGBTIQ+ legal services in New South Wales, Victoria and Queensland are nominally ‘Statewide’, these services all lack the resourcing to have genuine meaningful presences in rural or remote parts of their states, to perform outreach or other legal service delivery to these areas, or to build strong, safe and supportive community connections and referral pathways in the regions

Benefits of appropriately funded services

It is well recognised that community legal centres provide significant downstream benefits and savings commensurate to their funding. On average, community legal centres have been found to provide a downstream cost-benefit ratio of between 1:18 – providing eighteen dollars of value

⁶⁵ Insync (n.d) [Employee retention in community services organisations](#) [PDF], Insync.

⁶⁶ Insync (n.d) [Employee retention in community services organisations](#) [PDF], Insync.

⁶⁷ Lucas J et al (2023) ‘When primary healthcare meets queerstory: community-based system dynamics influencing regional/rural LGBTQ + people’s access to quality primary healthcare in Australia’, *BMC Public Health*, 23(387):1, doi:10.1186/s12889-023-15289-4.

⁶⁸ QLife (2016) [Rural and Regional: A QLife Guide for Health Professionals](#) [PDF], National LGBTI Health Alliance.

for every dollar spent.⁶⁹

Community legal centres provide an important benefit as diversions, referral pathways and alternate means of dispute resolution for other funded government services, such as courts and police (particularly for cases involving vulnerable population groups, or those that require specialist cultural sensitivities).⁷⁰ Access to community legal centres can prevent disagreements from escalating to costly trials or litigation, can protect and promote existing legal rights, and deter powerful parties from exploiting those who are poorer or more marginalised.⁷¹

Moreover, accessible and culturally-safe community legal centres can promote confidence in the rule of law and the justice system, particularly among marginalised and historically disadvantaged communities.⁷²

The other work of CLCs

Community legal centres provide significant support and services to their community beyond strictly legal support. LGBTIQ+ legal services currently lack sufficient funding to perform other important functions, such as:

- participation in law reform and systems advocacy, through both formalised mechanisms such as submissions to inquiries, and through self-directed advocacy that is responsive to the needs of their service users;
- delivering community legal education and information sessions and resources;
- delivering continuing professional development both internally and externally, and participating in professional bodies, panels, and working groups;
- developing resources for service users, community organisations and legal professionals;
- community networking and relationship-management, maintaining collaborative practice and referral pathways, and alliance-building;
- mentorship of younger professionals, and engagement with law schools, internships and student clinics; and
- communications, social media, marketing and branding for their service.

In some jurisdictions, State and Territory government funding contracts limit community legal centres to using NLAP funds for legal roles and services only. As centres are not required to report on non-legal work in the same way they are legal work, the value of this work is unreported or under-reported. Much as this type of work is particularly vital when working with LGBTIQ+ communities (particularly relationship-management, communication, and collaborative practice), due to the community embeddedness inherent in our practice, and the significant barriers to engaging our clients discussed in more detail above.

⁶⁹ Stebin S and Pearson A (2019) 'Community Legal Centres in the Digital Era: The Use of Digital Technologies in Queensland Community Legal Centre', *Law, Technology and Humans* 64.

⁷⁰ Denniss R, Fear J and Millane E (2012) [Justice for all Giving Australians greater access to the legal system](#), The Australia Institute, accessed 27 October 2021.

⁷¹ Ibid.

⁷² PricewaterhouseCoopers Consulting (Australia) (2023) [The benefits of providing access to justice National Legal Aid](#), National Legal Aid, accessed 27 October 2023.

Case Study: Alex

The LGBTI Legal Service recently advocated on behalf of Alex*, a transgender woman, who was charged by the Queensland Police Service (QPS) with stealing and fraud. LGBTILS, together with one of our volunteer solicitors, made submissions to the Police Prosecutor about both the fraud charge and the stealing charge.

The submissions were accepted by the Prosecutor in relation to the stealing charge, but not the fraud charge. The fraud charge related to Alex attending a beauty clinic for a prepaid treatment package. Parts of the treatment for which she had pre-paid could not be performed. As an alternative, given Alex had pre-paid for the treatment, she requested it be conducted on other parts of her body instead, which was done. As Alex was leaving the clinic, she was told by staff that there was an additional charge for the 'other' treatment she had received. Alex left the clinic without paying the additional charge. Alex was subsequently charged with fraud in relation to the unpaid additional charge.

LGBTILS together with one of our volunteer barristers, once again made submissions to the Police Prosecutor more than 3 weeks from the date of the Trial, arguing that the charge be withdrawn. Despite multiple attempts to confirm with the Prosecutor whether the submissions were accepted, it was not until 4.00pm the day before the Trial that the Prosecutor confirmed they would offer no evidence on the charge to the Court, meaning the charge was effectively 'dropped'.

This is not the first time that LGBTILS has been involved in a matter where at the 11th hour Prosecutions indicated that they will offer no evidence at the Trial. Such a situation is very stressful for the person and their close supports in the period leading up to the Trial, only to be informed that there is 'no case to answer' on the day of the Trial.

LGBTILS also raised repeatedly with the Prosecutor, and with the Magistrate in Alex's matter, that our client's name was entered incorrectly on all material prepared by the police (QPS), this included reference to Alex's 'dead name'. The inclusion of her dead name was unnecessarily distressing for Alex and we requested that the errors be immediately corrected. Unfortunately, on a number of occasions Alex continued to be referred to with the incorrect name.

LGBTILS continues to work closely with organisations including the QPS to ensure that their understanding of issues faced by the LGBTI community, including the distress 'dead naming' can cause to people identifying as transgender, is ever evolving and continually improves.

Systems advocacy and law reform

Due to systemic injustices, specialist, peer-led LGBTIQ+ community legal centres are required to invest significant resources into systems advocacy and law reform to meet the needs of communities.

Historically, this type of advocacy has been a major role of all LGBTIQ+ health and community

agencies, alongside their peer support and broader service delivery. Combating stigma, creating social change, and reforming discriminatory or unjust laws and systems has been acknowledged in the literature as critical to promoting the health and wellbeing of LGBTIQ+ communities.⁷³

Our services must, by necessity, engage not only in law reform and systems advocacy, but also engage with and celebrate our communities. To genuinely break down access to justice barriers, we must sit on local working groups, engage with health services, attend rallies and Pride fairs, and genuinely be within and of our communities. Our services spend significant resources on this advocacy, consultation, and community engagement, yet receive funding only for services related directly to the provision of legal assistance.

This necessary advocacy and community engagement may lead to the perception of work as political, however our advocacy is not aligned with any partisan political efforts, but rather are necessary to promote the health, safety, rights, wellbeing, and equality of our communities. Funding for specialist LGBTIQ+ legal assistance should not be beholden to political whims, changes in government, or the political agenda of any particular government.

It is vital that, during a time in which our lives continue to be politicised and vilified, and where anti-queer, anti-trans hatred and violence continues to rise,⁷⁴ appropriate legal and support services are funded to protect the rights and promote the health and wellbeing of our communities.

3) An evaluation of data collection, performance monitoring and reporting

Data gaps

A significant data gap exists regarding legal need for LGBTIQ+ Australians. The 2012 LAW Survey – a critical, foundational and extensive piece of work that has informed funding allocations and advocacy in the decade since – did not collect information about respondents' gender identity, sexual orientation or sex characteristics, so we have no baseline data on legal need for LGBTIQ+ Australians. There is also no population-based data, given the exclusion of LGBTIQ+ Australians from national Census surveys, though this is likely to change for the 2026 Census.

⁷³ White Hughto JM, Reisner SL and Pachankis JE (2015) 'Transgender stigma and health: A critical review of stigma determinants, mechanisms, and interventions', *Social Science & Medicine*, 147(147):222–231, doi:<https://doi.org/10.1016/j.socscimed.2015.11.010>.

⁷⁴ Trans Justice Project and Victorian Pride Lobby (2023) [Fuelling Hate Report: Abuse, Harassment, Vilification and Violence Against Trans People in Australia](#), Trans Justice Project and Victorian Pride Lobby.

Case Study: LGBTI Advisory Council

Even when key strategies and reports recognise the need to include LGBTIQ+ people, continued advocacy and engagement is needed to ensure that these recommendations are followed throughout consultation and implementation processes.

LGBTILS became aware that an advisory body had been established to support the government's implementation of recommendations to a report into domestic and sexual violence. When applying, the service found that the recruitment process was exclusionary to the LGBTIQ+ community.

The advisory body was formed in response to a report that found LGBTIQ+ people are a priority group whose input is needed in DFV reform. The advisory group specifically encouraged applications from all other priority groups mentioned in the report, except for LGBTIQ+ people. The recruitment process did not collect data on the LGBTIQ+ identity of applicants, meaning that would not be sufficient information to ensure that the Council is reflective of the diverse needs of victims of crime. The recruitment asked for applicants to supply their "sex at birth". This question is not relevant to any function and acts to exclude transgender and intersex applicants.

LGBTILS raised these concerns, and appropriate changes were implemented once the advisory body had been notified. Without the advocacy work of the service, this advisory council likely would not have been responsive to the voices of the LGBTIQ+ community, despite being named as a priority group in the report.

Moreover, many government departments and services (notably Legal Aid Commissions), do not record the number of LGBTIQ+ related enquiries they receive.⁷⁵ Much of the evidence in this submission was gathered directly by our services through community surveys and consultation, drawn from our casework and client engagement, or extrapolated from social and health needs analyses. In 2020, as part of the Justice Project, the Law Council of Australia specifically recognised this data gap, noting that "LGBTI+ people are often left out of policy development altogether, and their legal and justice needs are under-researched."⁷⁶

Funding for specialist LGBTIQ+ legal assistance must go beyond service provision, and also include appropriate funding for ongoing and timely needs analyses, data collection, community consultation and evidence-building. The Justice Project final report recommended that government "invest in building an evidence base regarding LGBTI+ engagement with the justice system and legal need".⁷⁷

⁷⁵ Law Council of Australia (August 2018) [The Justice Project Report](#), Law Council of Australia, 12.⁷⁵

⁷⁶ Law Council of Australia (August 2018) [The Justice Project Report](#), Law Council of Australia, 4.

⁷⁷ Australian Pro Bono Centre, [Justice Project Pro Bono Tool – LGBTI+ People](#), accessed 27 October 2023.

Data collection challenges

Given the abovementioned historical injustices and systemic abuses towards LGBTIQ+ people and communities, data collection efforts which are solely driven by government or academia are sometimes met with skepticism and low response rates, leading to inaccurate and incomplete data.⁷⁸ By contrast, LGBTIQ+ communities have historically responded enthusiastically to community-driven and community-controlled research and consultation projects, and to those where government or academia have collaborated closely with community-led organisations to drive community engagement. For example:

- the *Private Lives* series of national health and wellbeing surveys, managed jointly by Rainbow Health Australia and La Trobe University, and promoted by LGBTIQ+ community and health organisations;⁷⁹
- the SWASH biannual survey of lesbian, bisexual and queer women's health, conducted as a partnership between ACON and The University of Sydney;⁸⁰
- the 2018 *Australian Trans and Gender Diverse Sexual Health Survey*, designed by the University of New South Wales' Kirby Institute and promoted and delivered by community advocates;
- intersex Human Rights Australia's ongoing engagement and consultations with Australian intersex people.

Consultation burdens

In our experience, LGBTIQ+ community organisations are frequently called upon to participate in consultations, working groups and research projects, yet are rarely funded or resourced to appropriately respond to these requests without facing resourcing constraints or creating a burden on service delivery. Often, LGBTILS is the only Queensland-based LGBTIQ+ organisation approached for consultation, and/or other LGBTIQ+ organisations lack capacity to respond (due to abovementioned funding gaps), with the result being that if LGBTILS does not provide input, the needs and perspectives of the community will not be reflected in legislation, policy or strategy documents.

For example, in the last four months, LGBTILS was invited to take part in twelve community consultations or research projects, eight of which it responded to. This work is vital to ensure that government initiatives are responsive to LGBTIQ+ community need, but engagement requires significant investment of staffing and resources.

Funding under the NLAP must be sufficient to ensure that LGBTIQ+ community legal centres have sufficient resourcing to drive the research projects, needs analyses and consultations which engage with our communities. These consultations and research efforts must be conducted in peer-led and culturally-safe ways. The data that arises from these efforts must be accessible to and held within our organisations and communities, and used to meaningfully inform the response to our communities' needs.

⁷⁸ Henderson ER et al. (2019) 'Considerations on Sampling in Transgender Health Disparities Research', *LGBT Health* 6(6): 267-270.

⁷⁹ Hill et al. (2020) 'Private Lives 3: The health and wellbeing of LGBTIQ people in Australia', *ARCSHS Monograph Series* 122, Australian Research Centre in Sex, Health and Society, La Trobe University.

⁸⁰ Mooney-Somers J et al. (2020) [Women in contact with the Sydney LGBTIQ communities: Report of the SWASH Lesbian, Bisexual and Queer Women's Health Survey 2016, 2018, 2020](#) [PDF], Sydney Health Ethics, University of Sydney.

Case Study: Consultation and Law Reform

LGBTILS was invited to write a response to a consultation paper on the Development of a Queensland Domestic and Family Violence Perpetrator Strategy. DFV is as prevalent in LGBTIQ+ relationships and communities as in the wider community, but specialist supports and strategies are largely non-existent. The consultation paper revealed many gaps in the strategy that excluded or ignored the experiences of LGBTIQ+ people, such as perpetrator's use of stigma and internalized homophobia to perpetuate violence and control.

The submission was undertaken in collaboration with another community organisation. Over three weeks, staff members and volunteers worked on the submission for over 30 hours. The response considered expert knowledge from frontline workers, people with lived experience of DFV, stories from clients, and both peer reviewed and grey literature. Based on this specialist focus and knowledge, LGBTILS was able to explain the special needs of the LGBTIQ+ community in responding to violence.

Historically, when making government submissions, organisations that do not specialise in LGBTIQ+ community will often completely exclude any mention of LGBTIQ+ people and communities. Without the submission which highlighted specific insights of our service, the specific needs and concerns of the LGBTIQ+ community may not have been considered at all in this vital area of reform.