

29 September 2021

By email

Legislative Services
Attorney General's Department

Submission re: Criminalising coercive and controlling behaviours

To Legislative Services, Attorney General's Department,

Thank you for the opportunity to make this submission regarding the draft Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021.

This submission is being made on behalf of the South Australian Rainbow Advocacy Alliance (SARAA), a community led organisation that advocates for the rights and wellbeing of lesbian, gay, bisexual, transgender, intersex, queer and asexual (LGBTIQA+) South Australians.

Our submission speaks to the impact of this Bill specifically on LGBTIQA+ communities and is informed by our lived experience of domestic and family violence as LGBTIQA+ South Australians, as well as input from our LGBTIQA+ Community Advisory Group.

Domestic and family violence has a devastating impact on LGBTIQA+ communities, yet the statistics, impact and appropriate responses are relatively unknown. *Private Lives 3 (2020)*,¹ Australia's largest national survey of the health and wellbeing of 6,835 LGBTIQ+ people found that:

- Around 4 in 10 participants reported ever being abused by a family member or intimate partner.
- 4 in 10 respondents who reported having ever experienced family or intimate partner violence felt they were targeted for this abuse because of their sexual orientation, gender identity and/or gender expression or intersex variation/s.
- 72% of LGBTIQA+ participants who reported having ever experienced family or intimate partner violence did not report the abusive behaviour.

¹ Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University. Available at www.latrobe.edu.au/arcschs/publications/private-lives/private-lives-3.

- Only 5.9% of participants reported abuse to the police, and only 45% of those that did felt supported. Similarly, only 2.3% of participants reported abuse to a domestic or family violence service, and 65.1% of those that did felt supported.
- One-fifth (22%) of participants reported experiencing homelessness, with current homelessness reported at more than twice that of the general population.
- Around a third of participants who experienced homelessness reported family rejection or family violence as circumstances related to homelessness.
- 29.8% of trans and gender diverse participants reported barriers to housing and homelessness services because of their gender identity and 15.9% of all participants because of their sexual orientation.

SARAA welcomes this Bill's intent to strengthen domestic and family violence laws by criminalising coercive and controlling behaviour. To strengthen the Bill's ability to address the unique and complex LGBTIQ+ experiences of domestic and family violence, we call on the Government to:

1. Count LGBTIQ+ people in domestic and family violence data and statistics.
2. Define an 'act of abuse' in the Bill to include abusive behaviours experienced specifically by LGBTIQ+ communities.
3. Raise awareness of LGBTIQ+ experiences of domestic and family violence.
4. Include LGBTIQ+ people in domestic and family violence policies, strategies and services responses.

Background about our LGBTIQ+ lived experience of domestic and family violence

This submission is informed by our lived experience of domestic and family violence as LGBTIQ+ South Australians.

In 2020/21, SARAA was funded by the Department of Human Services SA (DHS) to establish an LGBTIQ+ Community Advisory Group to serve as a diverse but collective voice for the LGBTIQ+ community in public policy and decision-making. This work builds upon the 2019 LGBTIQ+ Roundtable held by Minister for Human Services, Michelle Lensink MLC.

The LGBTIQ+ Community Advisory Group report was delivered to DHS in July 2021 and outlines the key priorities for LGBTIQ+ inclusion, health and wellbeing in South Australia under 4 themes of:

- Represent and lead for our communities
- Advance our equality and safety under the law
- Include and respect us in the services we access
- Improve our health and wellbeing.

Domestic and family violence featured as a key issue of importance for our members and their experience is reflected in the recommendations below.

We also urge you to consult with specific cohorts this Bill will impact, especially First Nations people, people of colour and disabled people.

Recommendation 1: Count LGBTIQ+ people in domestic and family violence data and statistics

Our communities know first-hand that LGBTIQ+ people experience domestic and family violence at similar rates to cis-gendered heterosexual people, yet LGBTIQ+ people remain rarely seen in domestic and family violence data and statistics.

The national Australian Bureau of Statistics Personal Safety Survey does not collect data on LGBTIQ+ identity, and the majority of domestic and family violence surveys and data collection tools fail to properly collect data about sexuality and gender identity. Often, domestic and family violence data is heteronormative and cisnormative (prioritising people who are heterosexual and not transgender or gender diverse) in nature, featuring men as perpetrators and women as victims, and failing to account for domestic and family violence experienced in same-sex couples and by transgender and gender diverse people.

This has a detrimental impact on LGBTIQ+ people experiencing domestic and family violence, making victims and survivors feel invisible, like they won't be supported, and that no one will believe them. These feelings translate into under-reporting of domestic and family violence by LGBTIQ+ people, due to feeling unsafe and unsupported to report, and a lack of understanding of LGBTIQ+ relationships. In turn, this invisibility and lack of recognition of domestic and family violence in gender diverse and same-sex relationships contributes to under-reporting of domestic and family overall.²

The limited data that is available demonstrates that people with a diverse range of LGBTIQ+ identities experience domestic and family at similar rates to their cisgender heterosexual peers.

Private Lives 3 (2020) Australia's largest national survey of the health and wellbeing of LGBTIQ+ people to date showed that more than 4 in 10 participants reported ever being in an intimate relationship where they felt they were abused in some way by their partner/s. The most common reported forms of intimate partner violence were emotional abuse (48.1%), verbal abuse (42.4%), physical violence (25.0%) and sexual assault (21.8%). Generally lower proportions of cisgender men reported experiencing intimate partner or family violence

² Australian Institute of Family Studies (December 2015) 'Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities', available at <https://aifs.gov.au/cfca/publications/intimate-partner-violence-lgbtq-communities>.

compared to cisgender women, trans men, trans women and non-binary participants, reflecting ‘the gendered nature of violence toward people socialised as women’.³

The survey showed similar results in relation to family violence. Almost 4 in 10 (38.5%) participants reported ever feeling abused by a family member, with the most common reported forms of family violence being verbal abuse (41.5%), LGBTIQ-related abuse (40.8%), emotional abuse (39.3%) and physical violence (24.2%).

This data shows that LGBTIQ+ experiences of domestic and family violence is real and requires a public policy response, starting with better collection of data and statistics counting the prevalence of domestic and family violence in LGBTIQ+ South Australian communities.

The South Australian Government’s Department of Human Services recently published the ‘Data Collection and Gender Guideline: Data collection and working with the LGBTIQ+ community’.⁴ This provides guidance to agencies on how to respectfully collect data about gender identity and sex in a manner inclusive of transgender and gender diverse people. We strongly urge the South Australian Government to implement this guideline across government, and particularly in relation to domestic and family violence.

We also note that developing guidelines for and collecting data about sexuality and gender as it relates to experiences of violence was recommended by the Commonwealth Parliamentary Inquiry into family, domestic and sexual violence.⁵

Recommendation 2: Define an ‘act of abuse’ in the Bill to include abusive behaviours experienced specifically by LGBTIQ+ communities

LGBTIQ+ people live through complex circumstances that put us at particular risk of domestic and family violence and that are unique and specific to our communities, not experienced by our cisgender heterosexual peers.

South Australian LGBTIQ+ communities have long experienced and continue to experience homophobia, transphobia, discrimination, harassment and abuse by our friends, family, teachers, colleagues and peers. As a result, we’re at significantly higher rates of poor mental health including depression, anxiety and suicidal ideation than the general population.⁶

³ Hill, A. O. et al. (2020). ‘Private Lives 3’. p. 70-77.

⁴ Department of Human Services, Government of South Australia (2021). ‘Data Collection and Gender Guideline: Data collection and working with the LGBTIQ+ community’ Available at <https://dhs.sa.gov.au/about-us/key-strategies-and-plans/data-collection-and-gender-guideline>.

⁵ Commonwealth of Australia (2021), ‘Inquiry into family, domestic and sexual violence’, Parliament of Australia, p.208-9. Available at www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report.

⁶ Hill, A. O. et al. (2020). ‘Private Lives 3’. p.46.

Continued marginalisation and experiences of living in societies that don't accept and include us make us more vulnerable to domestic and family violence.

Experiencing domestic and family violence because of one's sexual orientation, gender identity and/or gender expression or intersex variation/s is common for LGBTIQ+ people. *Private Lives 3 (2020)*, found that 4 in 10 (42.6%) respondents who reported having ever experienced violence from an intimate partner or family member felt they were targeted for this abuse because of their sexual orientation, gender identity and/or gender expression or intersex variation/s.⁷

The range of behaviours that constitute abuse for LGBTIQ+ communities is different to that for our cisgender heterosexual peers. Behaviours that constitute abuse for LGBTIQ+ communities include:⁸

- physical violence committed by a family member due to their homophobia and/or transphobia
- sexual violence, such as coercing a partner to have sex through manipulation of shame related to the victim's sexual orientation and/or gender identity
- humiliating or degrading a person because of their sexual orientation, gender identity, intersex variations or HIV status
- disclosing or threatening to disclose a person's sexuality, gender identity, intersex variations or HIV status to others without their consent, known as "outing"
- deliberately referring to someone by words or language that isn't affirming for them, such as using a former pronoun or gender identity, known as "misgendering"
- deliberately using the name a person was given at birth and known by before affirming their gender or coming out, known as "deadnaming"
- controlling how a person expresses their identity, including preventing a person from accessing gender affirming healthcare, controlling what a person wears or enforcing gender stereotypes
- a perpetrator telling a person that the police, justice system, or domestic and family violence support services aren't safe for LGBTIQ+ people and won't support the victim
- telling a person that they're not a real lesbian/ gay man / bisexual/ transgender person if they don't fit stereotypical ideals

⁷ Ibid. p. 70-77.

⁸ Commonwealth of Australia (2021), 'Inquiry into family, domestic and sexual violence', p187-189; Australian Law Reform Commission (2012) 'Family Violence and Commonwealth Laws - Improving Legal Frameworks'. Available at www.alrc.gov.au/publication/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117/.

- telling a partner they'll lose custody of children if they share their LGBTIQ+ status with others
- threatening to or withdrawing healthcare, for example gender affirming hormones, care relating to a person's HIV status
- family members withholding consent for or access to gender affirming hormones
- stopping a person from seeing their LGBTIQ+ friends
- preventing a person from participating in LGBTIQ+ specific peer support or community events that are often vital for young LGBTIQ+ people's mental wellbeing
- using a person's sexuality or gender identity as an excuse to be controlling.

While we believe these behaviours fall within the broad ambit of s20B(12) of the Bill, we encourage the Government to review this section to ensure these behaviours are captured as acts of abuse.

We also call on the government to develop resources for services and the community providing guidance on behaviours that constitute abuse specific and unique to LGBTIQ+ communities, in consultation with LGBTIQ+ organisations.

Recommendation 3: Raise awareness of LGBTIQ+ experiences of domestic and family violence

The heteronormative and cisnormative framing of domestic and family violence results in a significant gap in knowledge about LGBTIQ+ experiencing domestic and family violence. This framing trains non-heterosexual, cisgender, and even LGBTIQ+ people themselves to not recognise certain behaviours as domestic and family violence.

This knowledge gap also applies to the services available to LGBTIQ+ people experiencing domestic and family violence. Evidence to the Commonwealth Parliamentary Inquiry into family, domestic and sexual violence has stated that LGBTIQ+ domestic and family violence 'is a relatively uncommon area of expertise within health and social service settings' and that 'sexuality and gender diverse people are far less likely than the general population to find support services that meet their specific needs'.⁹

Accordingly, recommendation 40 of the Commonwealth Parliamentary inquiry recommended the Commonwealth Government 'fund a national research project to examine the impact of family, domestic and sexual violence affecting the LGBTIQ community, and review best practice models to inform appropriate responses' and 'in cooperation with the states and territories, develop and implement nationally consistent, regular and targeted education and training within mainstream services, including police and paramedics, in relation to the nature, features and

⁹ Commonwealth of Australia (2021), 'Inquiry into family, domestic and sexual violence', Parliament of Australia, p.186-189.

dynamics of intimate partner violence and its particular impact on those from LGBTQI communities'.¹⁰

To effectively implement this Bill and ensure it addresses LGBTIQ+ experiences of domestic and family violence, we call on the South Australian Government to develop materials and guides to educate domestic and family violence services on the impact of domestic and family violence on LGBTIQ+ communities, and how to provide inclusive and culturally appropriate support.

Rainbow Health Victoria have developed a range of resources to inform domestic and family violence service providers on the inclusion of LGBTIQ+ people in services, programs, policies and campaigns, including a guide to primary prevention of family violence experienced by LGBTIQ communities,¹¹ and a guide for communications and engagement to support primary prevention of family violence experienced by LGBTIQ communities.¹² These may serve as a model to be adapted and implemented within South Australian domestic and family violence services.

Recommendation 4: Include LGBTIQ+ people in domestic and family violence policies, strategies and services responses

The knowledge gap in relation to LGBTIQ+ domestic and family violence creates significant barriers to recognising and reporting domestic and family violence which have a damaging impact on the LGBTIQ+ South Australians who experience it.

Barriers experienced by LGBTIQ+ South Australians to recognising and reporting domestic and family violence include fear of not being taken seriously, real or feared discrimination by police and support services, a higher threshold to abuse, and not being aware of the existence of LGBTIQ+ inclusive support services. This fear of discrimination and lack of inclusive support services causes many LGBTIQ+ South Australians avoid seeking the vital and often life-saving support they need.

72% of LGBTIQ+ participants in the *Private Lives 3* survey who reported having ever experienced family or intimate partner violence did not report the abusive behaviour. Only 5.9% of participants reported it to the police, and only 45% of those that did felt supported, the lowest level of support felt of all services. This includes to LGBTIQ+ liaison officers. Similarly, only

¹⁰ Commonwealth of Australia (2021), 'Inquiry into family, domestic and sexual violence', Parliament of Australia, p.xxxiv.

¹¹ Carman, M. et al. (2020) *Pride in prevention: a guide to primary prevention of family violence experienced by LGBTIQ communities*. Available at www.rainbowhealthvic.org.au/media/pages/research-resources/pride-in-prevention-evidence-guide/1698806318-1605661768/pride-in-prevention-evidence-guide.pdf.

¹² Fairchild, J. (2021) *Pride in prevention messaging guide: a guide for communications and engagement to support primary prevention of family violence experienced by LGBTIQ communities*. Available at www.rainbowhealthvic.org.au/research-resources.

2.3% of participants reported it to a domestic or family violence service, however 65.1% of those that did felt supported. LGBTIQ+ people were most likely to report abuse to and feel supported by a counselling service or psychologist. 18.7% of participants reported abuse to a counselling service or psychologist and 89.4% felt supported in doing so.¹³

Homelessness is one of the more significant impacts of domestic and family violence and discrimination or violence based on sexual orientation or gender identity is often perceived as both a cause of homelessness and barrier to accessing housing and homelessness services.

One-fifth of *Private Lives 3* participants reported having ever experienced homelessness, and participants reported current homelessness at rates more than twice that of the general Australian population.¹⁴ Around a third of participants who ever experienced homelessness reported family rejection or family violence as circumstances related to homelessness. These trends are exacerbated in young South Australians, demonstrated by the South Australian summary of *Writing themselves in 4*, the largest ever study on the experiences of LGBTQ+ young people aged 14-21 in Australia. 46.1% of South Australian participants perceived rejection from family to be a cause of their homelessness and 40.4% of South Australian participants perceived family violence to be a cause of their homelessness.¹⁵

Sexual orientation and gender identity also often serves as a barrier to housing and/or accessing homelessness services. *Private Lives 3* found that 15.9% of participants reported barriers to services because of their sexual orientation and 29.8% of trans and gender diverse participants reporting barriers to services because of their gender identity.

We need LGBTIQ+ people to be included in domestic and family violence policies, strategies and services so we feel safe in accessing vital support. We strongly encourage the Government to develop policies and programs responding to domestic and family sexual violence as it affects LGBTIQ+ communities in partnership with LGBTIQ+ organisations, as recommended in the Commonwealth Parliamentary Inquiry into family, domestic and sexual violence.¹⁶

We're deeply concerned about low rates of reporting of abuse to police and feelings of a lack of support when doing so. We urge the South Australian Government to require all SA Police Officers with a role that puts them in contact with the public to undertake basic training on how to respect and support LGBTIQ+ people when they report abuse and engage with the legal and justice systems.

¹³ Hill, A. O. et al. (2020). 'Private Lives 3'. p.70-77.

¹⁴ Ibid. p. 36.

¹⁵ Hill AO, Lyons A, Jones J, McGowan I, Carman M, Parsons M, Power J, Franklin JD, Bourne A (2021) Writing Themselves In 4: the health and wellbeing of LGBTQ+ young people in Australia. South Australia summary report, ARCSHS Monograph series number 128. Australian Research Centre in Sex, Health and Society, La Trobe University: Melbourne. p. 102. Available at www.latrobe.edu.au/arcschs/publications/writing-themselves-in-publications/writing-themselves-in-4.

¹⁶ Commonwealth of Australia (2021), 'Inquiry into family, domestic and sexual violence', Parliament of Australia 208-209.

We're also alarmed by the rates of homelessness and barriers to housing and homelessness services experienced by LGBTIQ+ people. We call on the Government to provide culturally inclusive housing options for LGBTIQ+ people leaving domestic and family violence, for example emergency accommodation and homelessness services. Such accommodation must take into account gender-based needs, for example non-binary people may feel unsafe in men's shelters and unwelcome in women's shelters.

Conclusion

Thank you again for the opportunity to comment on the proposed Bill. We would be very happy to discuss these matters with you further.

We will also make this submission publicly available to ensure our members and supporters are aware of our position on this Bill.

Kind regards,

Varo L.E.
they/ them

Board Chair
South Australian Rainbow Advocacy Alliance (SARAA)



SARAA acknowledges and pays respects to the Kurna, Nukunu and Ngarrindjeri people, whose land we operate and live on. Aboriginal land was stolen, never ceded, and we stand in solidarity with First Nations people, especially those who are also members of the LGBTIQ+, Brotherboy and Sistergirl communities.