

## LGBTQI experiences of seeking help and justice in the wake of sexual harm

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DAVID L. HARE

### Abstract

Within Aotearoa/New Zealand's justice system and help-providing professions, little is known or understood about LGBTQI experiences of sexual harm. In this research report, which is based on research I conducted as part of my Masters of Public Policy, I demonstrate that institutional and legal frameworks, as well as wider societal understandings of sexual violence, create intersecting barriers to help-seeking and justice for LGBTQI people who have experienced sexual harm. These discriminating factors are found to be symptomatic of a wider societal heteronormative discourse, which further delegitimises traumatised LGBTQI victims of sexual harm. Subsequently, LGBTQI people rarely attempt to seek help or justice in the aftermath of their assault. This report identifies three challenging issues facing the LGBTQI community in Aotearoa/New Zealand regarding their experiences of sexual harm, and argues that policy makers seeking to address these issues need to adopt a more holistic approach that considers wider socio-cultural discourses of gender, sexuality, and sexual violence.

### Keywords

*LGBTQI, sexual harm, help-seeking, justice, intersectionality, heteronormativity, institutional policy*

### Introduction

Accessing justice and help services when any form of sexual harm or abuse has occurred can often be a challenging process for victims, as well as for police and professional services. This is particularly true when victims of sexual harm belong to already marginalised (and misunderstood) social groups, such as LGBTQI (lesbian, gay, bisexual, transgender, queer/questioning, intersex) communities. Due to the lack of available crime and health statistics pertaining to LGBTQI people in Aotearoa/New Zealand, little is known about the impact of sexual harm on these communities or what, if any, help and support they feel able to access. Based on the statistics that do exist, three concerning issues are identified in this report:

- a) The vulnerability of LGBTQI school students;
- b) The levels of abuse experienced by LGBTQI people;
- c) The number of 'invisible' victims of sexual harm who identify as LGBTQI.

The potential magnitude of the problems identified requires further research and it is the purpose of this report to identify some of the reasons why these issues persist and remain ignored by mainstream society. LGBTQI people face a number of barriers when looking to access justice, health, and support services; this report describes why policy makers working in these services need to take a more holistic approach if such barriers are to be overcome. Rather than focussing solely on LGBTQI communities as the location of potential barriers, policy makers must instead recognise the wider socio-cultural discourses of gender, sexuality, and sexual violence that create these barriers in the first place.<sup>1</sup>

## The LGBTQI acronym

The acronym LGBT arose in the late twentieth century when lesbian, gay, bisexual, and transgender (trans) communities aligned their interests over the common issues they faced. The acronym describes the heterogenous nature of this diverse collective, each letter representing a distinct group who face some common causes of discrimination and violence (Cruells, 2013). The twenty-first-century addition of ‘QI’ to the acronym refers to queer or queering (or sometimes ‘questioning’) and intersex people. In the rest of this report, I outline some of the barriers faced by LGBTQI victims of sexual harm when they attempt to access justice and professional support. The causes of these barriers, as we shall see, are as diverse and as fluid as the acronym itself.

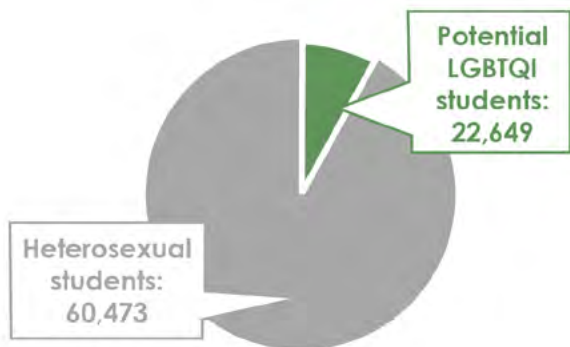
## LGBTQI and sexual harm

National crime surveys have traditionally not taken into consideration sexualities or gender identities, resulting in scarce or incomplete statistics relating to LGBTQI people accessing justice and support services. However, there has been some recent movement in statistical collection. For instance, the New Zealand Crime and Victims Survey, implemented annually by the Ministry of Justice, now includes a gender identity question. Furthermore, the recently completed ‘Counting Ourselves’ survey is a community-led health survey about trans and non-binary New Zealanders, and includes questions on experiences around stigma, discrimination, and violence (Counting Ourselves, 2019). Both of these survey results were released in the latter half of 2019. Stats NZ is the real focal point here, because change only occurs across the sphere of statistics collection when they change their question architecture. Stats NZ has been working on collecting data on the LGBTQI community, with the aim of using a new statistical standard for gender identity and diversity in all social surveys going forward, including the 2023 Census (Stats NZ, 2018b).

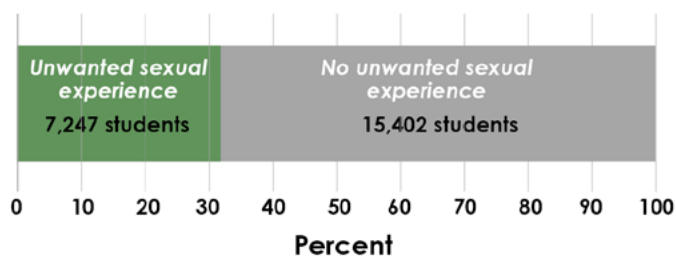
## A vulnerable student population

To demonstrate the importance of collating accurate statistics about LGBTQI communities, I first consider the implications of sexual harm occurrence in Aotearoa/New Zealand’s student population. According to the Youth 2012 student survey (Clark et al., 2013), eight percent of the 8,166 high school students who responded to the survey identified in one way or another as LGBTQI, with almost four percent identifying as transgender or gender-unsure (Clark et al., 2013). More research is needed to ascertain whether or not this eight percent extrapolates across the Year Nine to Year 13 national student population. Nevertheless, using the 2012 equivalent national secondary student population of 283,122 (Education Counts, 2018), we can posit that over 22,600 students might identify as belonging to one or more LGBTQI communities (see Figure 1).

In the Youth 2000 Survey, 32 percent of same-sex and both-sex attracted student participants disclosed they had been touched in a sexual way or made to do sexual things that they did not want to do (Le Brun, Robinson, Warren, & Watson, 2004; cited in Dickson, 2016). This rate is higher than the reported 26 percent (for female) and 14 percent (for male) opposite-sex attracted high school students (Le Brun et al., 2004; cited in Dickson, 2016, p. 5). Thus, of the possible 22,649 LGBTQI students in Aotearoa/New Zealand, 7,247 (32%) of them may have experienced some form of sexual abuse or assault (see Figure 2). According to Harvey,

**Figure 1: Potential LGBTQI identifying secondary school students**

Mitchell, Keeble, Nicholls, and Rahim (2014), LGBTQI people are often deterred from seeking help or justice after experiencing sexual harm due to various interpersonal, structural, and cultural barriers standing in their way (cf. Levine, 2018). Thus, many LGBTQI students in Aotearoa/New Zealand may be unable or unwilling to access adequate legal or professional support in the aftermath of their experiences of sexual harm.

**Figure 2: Proportions of estimated LGBTQI students touched in a sexual way or made to do sexual things that they did not want to do**

## Intimate partner violence in adult relationships and invisible LGBTQI victims

In Aotearoa/New Zealand, the lifetime prevalence of intimate partner violence (IPV) in heterosexual relationships is 20 percent (with 26% of women and 14% of men affected) (2014 NZ Crime and Safety Survey, 2014). Moreover, it is estimated that only 10 percent of IPV victims report the crime (Ministry of Justice, 2014).

In their US-based study, Ard and Makadon (2011) note that 28 percent of their respondents (21% of men and 35% of women) who were in a same-sex cohabiting relationship had experienced IPV. These findings are comparable to other international studies, which suggest that rates of IPV in same-sex relationships are the same as, if not higher than, reported rates of IPV in heterosexual relationships (Dickson, 2016; McKenry et al., 2006).

According to the 2013 Aotearoa/New Zealand census (Stats NZ, 2014), 0.9 percent of relationships were between partners of the same sex. In other words, around 8,328 people are in same-sex relationships. If 28 percent of these 8,328 people (2,332) have experienced IPV at some point in their life, and only 10 percent of these victims reported the crime (Ministry of Justice, 2014), then what happens to the remaining (over) 2,000 victims? This scenario pertains to the well-documented problem of how seldom sexual harm or IPV is actually reported or resolved in the first place. More than half the 4,056 offences categorised as sexual assault or related crimes in 2014 were unresolved, the evidence being such that the police were unable to pursue a case for prosecution (Stats NZ, 2018a). Therefore, the concern is that due to the lack of official figures, the number of victims (including LGBTQI victims) remaining invisible to justice and support services could be significant.

## Barriers to victims within the justice system

### The legal frameworks

Aotearoa/New Zealand is one of the few countries where the police are responsible for conducting prosecutions. In the case of a serious sexual offence, the decision to prosecute and initiate charges sits with the police (Tinsley, 2011). If the police close a case, a victim can decide to file a charge or complaint at the District Court as a private prosecution (Tinsley, 2011; Ministry of Justice, 2011). According to Triggs (2009), 49 percent of sexual offence complaints made to the police were classified as either a false complaint (8%), no offence (34%), or a closed case (7%). Anderton (2018) notes that up until 2014, 30-45 percent of sexual assault reports were given a K3 (no offence) classification. A significant number of these K3 classifications were later deemed to have been (over)used inappropriately in cases that ought to have been pursued further by the justice system (Anderton, 2018). Since 2017, only 3.8 percent of sexual assault reports have been given K3 classifications, following a review by New Zealand Police of K3 report usage (Anderton, 2018; c.f. Tinsley, 2011; Triggs, Mossman, Jordan, & Kingi, 2009). This suggests that the actual rates of sexual violence reported in Aotearoa/New Zealand prior to 2017 may have been underestimated due to the overuse of the K3 classification.

Because sexual crimes are considered among the most serious offences, the police face barriers in resolving such cases. The lack of witnesses and the fact parties involved often know one another can hamper police officers' abilities to construct a robust prosecution. Moreover, confronted by the thought of this gruelling legal process, many victims choose to withdraw their complaint altogether (Ministry of Justice, 2014; Anderton, 2018).

### The barriers of social norms

The beliefs and attitudes surrounding IPV exist within a heteronormative understanding of relationships, where victims are presumed to be women and perpetrators are presumed to be men (Donovan & Hester, 2014; Levine, 2018). Framed within this mutually exclusive male/female binary, IPV is typically positioned as a gendered issue, rather than a crime that may transcend sexual and gender boundaries (Donovan & Hester, 2014). While the majority of IPV victims *are* women, there are also a significant number of men who experience violence at the hands of their (male, female, or non-binary) partners (Douglas & Hines, 2011; Jeffries & Ball, 2008; Ministry of Justice, 2014). A failure to acknowledge this can lead male victims of IPV to feel excluded from wider discussions and policymaking decisions about this issue, not to mention having their experiences delegitimised or undermined in public discourse about IPV.

Sexual violence is likewise framed by socio-cultural norms and expectations that rarely cohere with the reality of this crime. It is often assumed by the public to be perpetrated by predatory sex offenders who are unknown to the victim (i.e. stranger rape) and in locations outside the home (such as the stereotypical 'dark alley'). Such assumptions ignore the fact that the majority of sexual violations are perpetrated by someone known to the victim (Ministry of Justice, 2018). These (mis)understandings about rape are reinforced by warnings of 'stranger danger' that form a significant part of sexuality education discourses, and are also disseminated by media sensationalising of sexual violence cases. Additionally, rape victims are, again, typically presumed to be female, while perpetrators are presumed to be male, thereby downplaying the reality of male victims of rape. Moreover, when a victim of rape does report their assault (to their families, friends, or the police), victim blaming often occurs, particularly with women complainants. Their dress code or previous sexual experiences are held up as 'evidence' that they were 'asking for it' (Katz-Schiavone, Levenson, Ackerman, &

Jay, 2008; McGee, O’Higgins, Garavan, & Conroy, 2011). This further stigmatises victims of sexual violence and will often deter them from reporting their assaults.

The language of sexual and intimate partner violence thus typically assumes that these crimes are perpetrated by certain types of men against certain types of women. This highly gendered and heteronormative discourse of violence has been problematised by LGBTQI community stakeholders and academics alike as a major constraint against wider understandings of IPV and sexual violence. Consequently, non-normative gender identities and sexualities are delegitimised, with the result that processes to seek justice and legal, medical, or social assistance become difficult or impossible for LGBTQI victims of sexual harm (Donovan & Hester, 2014; Seymour, 2017). Moreover, as Sandra Dickson (2016) notes, these heteronormative discourses of sexual violence and IPV may even prevent LGBTQI victims from being aware of their own abuse and from seeking support.

Normative ideas about masculinity and femininity can also operate to make it difficult for LGBTQI survivors to recognise sexual victimisation inside intimate relationships. This includes misconceptions that women cannot sexually abuse other women; that men cannot be victims of sexual violence because they ‘always want sex’; and that trans women cannot be victims of sexual abuse (perpetrated by men or cis-gendered women) because they are ‘really men’.

It is therefore crucial that there is wider social recognition of the unique challenges faced by LGBTQI people who experience IPV and sexual violence, and the ways that their gender and sexual identities may shape their help-seeking behaviour.

### **Institutional barriers**

The New Zealand 1961 Crimes Act, section 128, defines sexual violation as an event when a person (a) rapes another person, or (b) has sexual connection with another person that is deemed unlawful (Crimes Act, 2012). When person A enacts rape or unlawful sexual connection against person B without getting person B’s consent, regardless of age and marital status, it is considered a crime. The Act states that if sexual activity occurs, it does not mean consent was granted where physical force, threat, fear, or deceit were employed, or if a person was unconscious, or was physically or mentally impaired (Crimes Act, 2012). The Crimes Act defines rape as the act of penetration of person B’s genitalia by person A’s penis. The penis thus becomes defined as the ‘instrument’ of rape (McDonald, Byrne, & Dickson, 2017, pp. 105-113). The framing of this institutional definition, reinforced by socially accepted binary norms of male/female power relations, means that ‘people who have female genitalia’ cannot rape and that ‘people without female genitalia’ cannot be raped (McDonald et al., 2017, p. 105). The Crimes Act thus situates sexual crime within the heteronormative binary frame of male and female; in doing so it delegitimises LGBTQI people – particularly transgender, genderqueer, and intersex people – and erases the reality of rape for victims who have been assaulted by someone of the same sex. Again, such erasure may deter LGBTQI victims of rape from reporting their assault or seeking support in its aftermath.

### **Support services barriers**

LGBTQI victims of sexual harm often do not know what professional or public care services within Aotearoa New Zealand look like or how to access them. Additionally, they may be reluctant to approach these services for help due to fears that they will be stigmatised because of their gender identity or sexuality. As Dickson (2016) explains, LGBTQI survivors believe that mainstream crisis support services will be unlikely to recognise sexual violence as an LGBTQI issue or take their experiences of sexual violence seriously. They may not believe their sexuality or gender identity will be respected by these services. This reluctance to approach

support services may have been informed by anecdotes about existing services which have been shared in LGBTIQ communities. Such anecdotes include instances of services judging survivors' gender identity, LGBTIQ survivors being told they have been sexually assaulted *because* of their sexuality or gender identity, and partners and friends not being recognised as 'legitimate' sources of support when they accompany survivors.

Moreover, according to community stakeholders I spoke to during the writing of this report, the onus often falls on transgender people to educate caregivers and professionals about their gender identity and explain how the sexual violence support service might best help them. For some stakeholders, this is deeply problematic. It also suggests a lack of resourcing and education about LGBTIQ communities within publicly available support services. LGBTIQ people do recognise that friends and rainbow non-governmental organisations, such as Rainbow Youth, can offer them valuable support, whereas more mainstream domestic violence services and the police are less likely to be of assistance (Dickson, 2016). According to LGBTIQ community stakeholders, the medical system's policies on providing gender-diverse help and care to survivors of sexual harm are limited or non-existent, particularly for trans and intersex people. LGBTIQ people simply do not know what will happen to them if they decide to seek help – so they often do not (Dickson, 2016).

## **Conclusion: Policies that recognise intersectionality**

Understanding the intersecting barriers, or oppressions, faced by LGBTIQ people seeking help in the aftermath of sexual harm involves recognising the multiple 'axes of inequality' (Cruells, 2013, p. 125) that these communities face. From a public policy perspective, intersecting social and political challenges require further research and consideration, rather than policy makers focussing on the individual identities of those most impacted by sexual harm. For policy to have a lasting effect, it should not only target the effects of discrimination but also the social and institutional causes undergirding such discrimination. The challenge for policy makers is not only to identify the unique and specific needs of a particular social group. Rather it is to understand how society as a whole makes sense of IPV, sexual harm, and queer identities in connection to the issues of sexuality and gender (Cruells, 2013). Our society needs to become more serious about supporting policy decisions that offer accessible and effective care for LGBTIQ people impacted by sexual violence.

*DAVID HARE has just completed his Masters in Public Policy at the University of Auckland. His previous work with victims of sex slavery in Kolkata, India, has encouraged him to research the structural issues underpinning impoverishment and the political implications of social justice.*

### **Notes**

1. This report is derived from a Masters of Public Policy research report developed during an internship with the Ministry of Justice (MOJ), 2018. The findings and recommendations of this report do not represent the New Zealand government's, or the MOJ's, policies or recommendations.

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