

Access to justice for children and young people in Aotearoa New Zealand

Working paper No.5 – Rainbow and takatāpui children and young people

1 June 2023

Author: Jennifer Braithwaite LLM (Hons), MSCL (Hons)

This research study was made possible thanks to a Justice Fellowship from the Michael and Suzanne Borrin Foundation.



© June 2023 Jennifer Braithwaite

Table of contents

Introduction	3
Context	3
Executive Summary	4
Terminology	4
Justice problems	4
Barriers to access	6
Possible solutions	7
Justice problems	9
Justice problems generally	9
Care and protection system involvement	11
Education system	13
Homelessness	16
Discrimination	17
Criminal Justice system involvement	18
Victimisation	22
Access to gender-affirming healthcare.....	24
Barriers	26
Attitudinal Barriers	26
Attitudes of others about rainbow people.....	26
Attitudes held by rainbow people.....	28
Structural / Systemic Barriers.....	31
Cultural competence	31
The system is not made for us	32
Practical barriers.....	33
Lack of knowledge	33
Intersectional Barriers.....	33
Possible Solutions	35
Introduction.....	35
Service delivery	35
Make mainstream services more accessible	36
Tailored / specialist services & resources.....	37
Diversity and representation	40
Training	40
Continuing professional development.....	41
Public education.....	41
References.....	42

Introduction

Context

This working paper forms part of an overall research project exploring the extent to which children and young people are able to access to justice in Aotearoa New Zealand. The findings of the research study are presented in three parts:

Part One contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children, as well as from a survey of children and young people aged 14 to 24.

Part Two discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas as well as analysis of information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people and is broken up into a series of reports relating to groups identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;
8. Poverty and socio-economic disadvantage;
9. Trauma; and
10. Intersectionality.

Part Three explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

These reports and working papers are available at: <https://www.cypaccesstojusticenz.com/>

Executive Summary

This working paper explores the justice problems and barriers to access experienced by rainbow and takatāpui children and young people followed by some of the possible solutions raised in the research and literature from Aotearoa New Zealand and overseas. I briefly discuss the terminology used in this report before summarising each section below.

Terminology

In this report I use the terms rainbow and takatāpui as terms inclusive of all LGBTQIA+,¹ takatāpui,² and MVPAFF people³ following the approach used by researchers in the Identify survey⁴ and to reflect Aotearoa New Zealand's bicultural foundation. In doing so I do not wish to suggest that rainbow and takatāpui children and young people are a homogenous group, quite the contrary. This community encompasses an enormous diversity of people who do not conform to the heteronormative cisgender paradigm. Moreover, people do not necessarily have a common lived experience even within each subgroup (e.g. lesbians or transgender people).⁵ However, given that the literature often discusses multiple different identities together (albeit in different combinations) I have followed a similar approach of using umbrella terms including using the terminology used by other writers where it may be relevant.⁶ In some cases I also highlight the experiences and/or any specific barriers for children and young people with particular sexualities and gender identities for example, when discussing the particular challenges experienced by gender non-conforming or transgender children and young people.

Justice problems

The justice problems of rainbow and takatāpui children and young people are a combination of similar justice problems to those experienced by all children and young people, although more frequent or more intense, and those that relate to their gender or sexuality.

Care and protection system involvement. Existing data suggests that rainbow and takatāpui children and young people are more likely to be involved with Oranga Tamariki and more likely to be in State care.⁷ Youth19 data also shows that rates of involvement also differs across other demographic characteristics with takatāpui Māori twice as likely to be involved as rainbow young people from other ethnic groups, rates of involvement were also about four times higher for

¹ LGBTQIA+ is an abbreviation for lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and more: Lesbian & Gay Community Services Center Inc. (2022). *What is LGBTQIA+?* <https://gaycenter.org/about/lgbtq/>

² Takatāpui is a traditional Māori term meaning 'intimate companion of the same sex' used to describe all Māori who identify with diverse genders, sexualities and sex characteristics: Rainbow Youth Inc & Tīwhanawhana Trust. (2017-2022). *Haere mai.* <https://takatapui.nz/#home>

³ MVPAFF is an acronym to describe Pasifika identities: Mahu (Hawai'i and Tahiti), Vaka sa lewa lewa (Fiji), Palopa (Papua New Guinea) Fa'afafine (Samoa) Akava'ine (Rarotonga), Fakaleiti (Tonga), Fakafifine (Niue): Rainbow Directory. (2022). *MVPFAFF* <https://rainbowdirectory.co.nz/glossary/mvpfaff/>

⁴ Identify Survey. (n.d.). *Info Sheet.* <https://www.identifysurvey.nz/info>

⁵ Gerber, P. & Timoshanko, A. (2021). Is the UN Committee on the Rights of the Child Doing Enough to Protect the Rights of LGBT Children and Children with Same-Sex Parents? *Human Rights Law Review.* 21(4), 786-836 at 30. Also includes a table that summarises the articles of the UNCRC that are relevant to LGBTQI+ children and young people.

⁶ At times it was difficult to determine whether particular terminology was used deliberately or it simply reflected evolving language and inclusiveness. Where this was unclear I erred on the side of using the same terminology as the document referred to.

⁷ King-Finau, T., Archer, D., Fenaughty, J., Sutcliffe, K., Clark, T., & Fleming, T. (2022). *The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki.* The Youth19 Research Group, The University of Auckland and Victoria University of Wellington, New Zealand; Malatest International. (2021). *Just Sayin' survey: Understanding the transition needs of rainbow young people.* Oranga Tamariki at 4-6.

those in alternative education or not in education or training, and gender diverse young people also reported higher rates of involvement than same or multiple sex attracted students.⁸

Education system. Rainbow and takatāpui children and young people experience a range of justice issues in the education system including issues common to other children and young people but more likely to be experienced by those who are rainbow and takatāpui such as bullying and being subject to disciplinary action by the school.⁹ Rainbow and takatāpui children and young people also experience additional issues relating to their identity such as gender affirming bathroom access, uniform requirements, changing names, sports and physical education including getting changed and participation based on affirmed gender, freedom of speech, rules relating to who they can take to the school ball, and displays of affection.¹⁰

Homelessness. Although there are some data limitations,¹¹ the data that is available suggests that rainbow young people are more likely to experience homelessness and/or housing deprivation.¹² Research in New Zealand and overseas also identifies associations between homelessness and family conflict, experience of formal or informal state care, involuntary mobility, and housing-related discrimination.¹³ Overseas studies also identify connections between homelessness and increased risks of victimisation and involvement in the criminal justice system.¹⁴

Discrimination. Research in New Zealand and overseas discusses the experience of gender and sexuality based discrimination in a range of contexts as well as the intersectional nature of discrimination.¹⁵

Criminal justice system involvement. Although the criminal justice system in Aotearoa New Zealand does not systematically collect data in relation to sexual orientation or gender identity

⁸ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 7, 21 & 27.

⁹ Fenaughty, J., Sutcliffe, K., Fleming, T., Ker, A., Lucassen, M., Greaves, L., and Clark, T. (2021). [A Youth19 Brief: Transgender and diverse gender students](#). The Youth19 Research Group, Victoria University of Wellington and The University of Auckland, New Zealand at 3; Veale, J., Byrne, J., Tan, K., Guy, S., Yee, A., Nopera, T. & Bentham, R. (2019). [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#). Transgender Health Research Lab, University of Waikato at 61; Arredondo, M. & Suarez, M. (2019). Ecological determinants of child welfare and juvenile justice involvement. In Conron, K. J. & Wilson, B. D. M. (Eds.) [LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda](#). The Williams Institute at 21; Himmelstein, K.E.W. & Brückner, H. (2011). [Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study](#). *Pediatrics*. 127(1), 49-57 at 54.

¹⁰ InsideOUT Kōaro. (2021). [Legal Rights at School: A resource for rainbow young people in Aotearoa](#); RainbowYOUTH and YouthLaw (n.d.) [School](#). <https://rainbowrights.nz/school>

¹¹ Paul, J. & Ratana, M. (2022). [Youth Homelessness in Tāmaki Makaurau, Aotearoa New Zealand](#). Ngā Wai a te Tui Māori and Indigenous Research Centre at 23.

¹² Clark, T.C., Drayton, B., Ball, J., Schwenke, A., Crengle, S., Peiris-John, R., Sutcliffe, K., Fenaughty, J., Groot, S., & Fleming, T. (2021). [Youth19 Housing Deprivation Brief](#). University of Auckland & Victoria University of Wellington, New Zealand at 5; Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#).

¹³ Fraser, B., Chisholm, E. & Pierse, N. (2021). “You’re so powerless”: Takatāpui/LGBTIQ+ people’s experiences before becoming homeless in Aotearoa New Zealand. *PLoS ONE*, 16(12), e0259799.

¹⁴ McCandless, S. (2018). LGBT Homeless Youth and Policing. *Public Integrity*. 20, 558–570 at 560. See also Global Initiative on Justice with Children & Child Friendly Justice European Network. (2022). [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 18 for an international discussion of these issues.

¹⁵ Fraser et al., “You’re so powerless”: Takatāpui/LGBTIQ+ people’s experiences before becoming homeless in Aotearoa New Zealand at 17; LGBTIQ Legal Service. (2020). [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#). St Kilda Legal Service; Thorne Harbour Health at 26.

other than in relation to the gender binary,¹⁶ a number of studies have described rainbow and takatāpui young people's experiences of discrimination and other negative experiences in the criminal justice system.¹⁷ Research overseas has also found that young people who identify as lesbian, gay, bisexual, trans-gender, or gender non-conforming are significantly over-represented in the criminal justice system with their paths into the criminal justice system often being connected to their sexual orientation or gender identity such as experiencing homelessness due to family rejection or abuse centred on their gender and/or sexuality, then being arrested for committing survival crimes such as stealing or trespassing.¹⁸

Victimisation. A series of studies in New Zealand have found that rainbow and takatāpui children and young people experience higher rates of multiple forms of victimisation including sexual assault, offences by family members, intimate partner violence, receiving unwanted digital communications, and harassment.¹⁹ Research overseas has also identified increased risks of victimisation by professionals including from foster parents, group home supervisors, case workers, and shelter staff.²⁰

Barriers to access

Attitudinal barriers. Rainbow and takatāpui children and young people also experience a range of barriers to accessing justice including barriers relating to homophobia, transphobia and heterosexism.²¹ In particular, the marginalisation of same-sex relationships and gendered assumptions about victimisation can mean that survivors of domestic or sexual violence are reluctant to report victimization.²² Participants in research in the United States also reported negative experiences in the court system including judges, prosecutors, and court officers

¹⁶ For example see Ministry of Justice, [Youth Justice Indicators Summary Report](#).

¹⁷ Independent Police Conduct Authority, Human Rights Commission & Children's Commissioner. (2012). [Joint thematic review of young persons in Police detention](#) at 41; King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 27. The figures are set out in a table at 28; Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#) at 79-80.

¹⁸ Mitchell, M., McCrory, A., Skaburskis, I., & Appleton, B. (2022). [Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System](#). *International Journal for Crime, Justice and Social Democracy*, 11(2), 99-112 at 102; Washington State Supreme Court Gender and Justice Commission, [2021: How gender and race affect justice now](#) at 427; Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 18.

¹⁹ Ministry of Justice, [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 110-111, 123 & 176; King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 27. The figures are set out in a table at 28; Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#) at 76; Netsafe (2021) [Online harm increasing in Aotearoa's rainbow community](#). <https://www.netsafe.org.nz/wp-content/uploads/2016/12/Netsafe-rainbow-release.pdf> at 3.

²⁰ Haslam et al., [The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report](#) at 21; Layard, E., Parker, J., Cook, T., Murray, J., Asquith, N., Fileborn, B., Mason, R., Barnes, A., Dwyer, A. & Mortimer, S. (2022). [LGBTQ+ peoples experiences and perceptions of sexual violence](#), ACON research summary report at 22; Greene, Homelessness at 34 citing Ventimiglia, N. (2012). LGBT Selective Victimization: Unprotected Youth on the Streets Homelessness. *Journal of Law in Society*, 13, 439-454.

²¹ Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 22.

²² Ibid at 26; Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 23-24; Guadalupe-Diaz, X. L., Jasinski, J. (2017). "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence. *Violence Against Women*, 23(6), 772-792 at 785.

refusing to use correct pronouns or names and making negative comments about their gender identity, gender expression or sexual orientation.²³

Experiences of poor treatment or awareness of the poor treatment of others can also lead to additional barriers including a lack of trust in police, the justice system, and authority in general.²⁴ For example, an Australian study found that LGBTIQ people frequently feel anxiety in their interactions with police, due to their collective and individual lived experience of homophobic and transphobic police responses which in turn reduces the likelihood they will report incidents to police or seek victims of crime assistance.²⁵

Structural / systemic barriers. The primary structural or systemic barriers I identified in research in New Zealand and overseas are that systems and services have been designed to meet the needs of cisgender heterosexual people and are therefore less accessible to people with different sexual and gender identities.²⁶ A related issue is that rainbow and takatāpui people can experience barriers due to lack of awareness about rainbow identities and relationships, a lack of understanding of the issues experienced by rainbow communities and their needs, or how to respond to them.²⁷

Practical barriers. Research overseas has also identified practical barriers including a lack of knowledge about their rights and financial barriers.²⁸

The barriers experienced by rainbow and takatāpui children and young people can also be compounded by intersectional marginalisation and disadvantage.²⁹

Possible solutions

This discussion begins with consideration of a hybrid approach to legal and related services including both establishing rainbow cultural competency and cultural safety across the service landscape and the provision of specialist services. It also discusses the importance of representation of members the community in the police, legal profession and the judiciary in order to increase trust, and increase service understanding of users' needs and barriers. A key

²³ Movement Advancement Project & Center for American Progress. (2016). *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth* at 18; Washington State Supreme Court Gender and Justice Commission, *2021: How gender and race affect justice now* at 427.

²⁴ Cornish, S. & Gourley, E. (2022, June 29). 'Work is needed': Sexual assault reporting stuck at below 10%, survey finds. *Stuff*. <https://www.stuff.co.nz/national/129104659/work-is-needed-sexual-assault-reporting-stuck-at-below-10-survey-finds> InsideOUT are an NGO supporting rainbow and takatāpui young people. See also LGBTIQ Legal Service, *LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program* at 35; Law Council of Australia, *The Justice Project: Final Report Part 1 LGBTI+ People* at 21.

²⁵ Victorian Pride Lobby. (2021). *Upholding our rights LGBTIQA+ attitudes towards and experiences of policing in Victoria* at 5-11.

²⁶ Guadalupe-Diaz & Jasinski, "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence at 4; McCandless, LGBT Homeless Youth and Policing at 559; Te Puna Aonui. (2023). *List of Family Violence and Sexual Violence Service Gaps*. https://tepunaaonui.govt.nz/assets/Other-Agencies/FVSV-gaps-list-for-public-consultation_March-2023.pdf at 4-5.

²⁷ Victoria State Government. (2016). *Access to Justice Review (Full report)* at [3.3.8]; Law Council of Australia, *The Justice Project: Final Report Part 1 LGBTI+ People* at 28; Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 32.

²⁸ Law Council of Australia, *LGBTI People: Consultation Paper* at 17.

²⁹ Law Council of Australia, *The Justice Project: Final Report Part 1 LGBTI+ People* at 30-32; Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 21; Irvine & Canfield, The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population at 254.

part of increasing rainbow cultural competency is training on a variety of topics including the rights and needs of rainbow children and young people, pronoun use, defining relevant terms, exploring myths and stereotypes, interrelated forms of bias and prejudice including HIV stigma, transphobia, homophobia, cisheterosexism, settler colonialism, and structural racism, as well as guiding staff on respectful and equitable service to rainbow and takatāpui children and young people including the use of gender and sexuality sensitive language.

The section on possible solutions is not a complete analysis, nor an attempt to identify all possible ways to resolve the access to justice challenges experienced by rainbow and takatāpui children and young people. It should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.³⁰

³⁰ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

Justice problems

Legal needs research in Aotearoa New Zealand has not considered the specific needs of rainbow and takatāpui people or of any subgroups thereof (including children and young people). As such, much of the discussion that follows draws from a combination of overseas research and literature and other research from Aotearoa New Zealand from which inferences about the justice needs of rainbow and takatāpui children and young people can be drawn.

Justice problems generally

A legal needs analysis carried out by the providers of an LGBTQIA+ legal service in Australia describes how LGBTQIA+ people can experience both legal issues that specifically relate to their gender or sexual identity (such as discrimination on the basis of sexual orientation, gender identity, change of name and sex markers and identification, and/or health and privacy complaints) as well as experiencing general legal issues that may play out in unique and specific ways (e.g. employment law, family violence, family law, criminal law, immigration law, tenancy and neighbourhood disputes).³¹

As with all groups, the experience of legal problems can be compounding with legal problems contributing to risk factors that increase disadvantage, including experiencing mental illness and homelessness, and also lead to additional legal problems.³² The Law Council of Australia discussed overseas research in relation to these intersecting noting “experiences of discrimination and social exclusion contribute to LGBTI+ people facing a higher prevalence of a range of risk factors that increase disadvantage, a reality that is sometimes referred to as ‘secondary victimisation’”³³ with many of the legal problems experienced by LGBTI+ people manifesting “in connection with their experience of marginalisation and disadvantage”.³⁴

Research in Canada involving 21 qualitative interviews with sexual-minority people who had recently experienced a serious legal problem in British Columbia, Alberta, and Manitoba found that sexual minorities continued to face serious legal challenges with participants describing “a wide variety of legal problems, including workplace discrimination, family law, immigration and refugee law, human rights law, criminal law, and the prison system. Participants discussed discrimination in a variety of settings, including employment, health systems, and educational institutions.”³⁵ The researchers concluded that the legal problems faced by participants “were often rooted in systems of racism, settler colonialism, homophobia, transphobia, and cisheterosexism”.³⁶ Of significance:³⁷

[M]any of the problems participants identified arose from how they were treated within legal proceedings or by legal or state actors rather than by the formal written law itself.... Common experiences included fear, exclusion, and mockery on the

³¹ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 2. See also Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 112-13 and Victoria State Government. (2016). [Access to Justice Review \(Full report\)](#) at 181.

³² LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 1.

³³ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 8.

³⁴ Ibid at 12.

³⁵ Community-Based Research Centre. (2021). [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#). Department of Justice Canada at 4.

³⁶ Ibid at 4.

³⁷ Ibid at 15.

basis of sexual orientation and/or gender identity, and explicit acts of homophobia or transphobia by both co-workers and management.

A longitudinal study in the United States published in Pediatrics found that youth who reported identifying as LGB or having same-sex attractions were more likely to be stopped by police, to be expelled from school, or to be arrested and convicted as juveniles and adults.³⁸ The authors also found that the increased risk of sanctions remained “even after controlling for nonheterosexual youths’ greater engagement in minor and moderate transgressive behaviors”.³⁹ They identified several possible explanations for their findings:⁴⁰

Institutional decision-makers may focus on nonheterosexual youth for punishment for sexual or other behaviors or be less likely to consider mitigating factors such as immaturity or self-defense. Indeed, teachers often overlook harassment of nonheterosexual students by their peers, and youth who report such abuse are frequently ignored or blamed for their victimization.^{3,6,10} In addition, nonheterosexual youth sometimes encounter homophobia in health care and child welfare systems.^{1,36,37} Thus, nonheterosexual youth who are harassed or engage in risky behaviors may find that instead of support, therapy, or services, their behaviors elicit punishment.

Other United States based research by the Movement Advancement Project and Center for American Progress identified similar issues to those raised by the Law Council of Australia describing pathways from family rejection and exclusion from the education system to homelessness or the child welfare system where LGBTQ youth frequently face stigma and discrimination, if not mistreatment and abuse, leading to them running away and ending up on the street where drug laws, laws criminalizing sex work and policing strategies often target LGBTQ youth.⁴¹

Another recent study in the United States by Young & Billings investigating how a range of less-examined characteristics shape people’s chances of facing a civil justice problem identified a “queer civil justice gap”.⁴² In particular, they found that “[b]eing LGBTQ+ significantly increases a person’s chances of experiencing debt and family structure problems, even though on their face, these problems may have little to do with queerness.”⁴³

The United Nations Committee on the Rights of the Child has also described the experiences of LGBTQIA+ adolescents, many of which constitute legal issues of some form (relating to criminal, civil or administrative law) as well as the consequences of these experiences:⁴⁴

Adolescents who are lesbian, gay, bisexual, transgender and intersex commonly face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information.¹⁶ In extreme cases, they face sexual assault, rape and even death. These experiences

³⁸ Himmelstein & Brückner, [Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study](#) at 54.

³⁹ Ibid at 53. Non-heterosexual youth do not engage in more violent behaviors than their peers.

⁴⁰ Ibid at 53.

⁴¹ Movement Advancement Project and Center for American Progress. (2016). [Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth](#). Movement Advancement Project at 5.

⁴² Young, K. M., & Billings, K. R. (2023). [An Intersectional Examination of U.S. Civil Justice Problems](#). *Utah Law Review*, 3, 487-543 at 526.

⁴³ Ibid at 527.

⁴⁴ United Nations Committee on the Rights of the Child. (2016). [General Comment No. 20. On the Implementation of the Rights of the Child During Adolescence CRC/C/GC/20](#). The Office of the High Commissioner for Human Rights at 9.

have been linked to low self-esteem, higher rates of depression, suicide and homelessness.¹⁷

Kirsten Sandberg, a former member of the United Nations Committee on the Rights of the Child considered whether sexual and gender identity are protected under the UNCRC in a paper in 2015.⁴⁵ She argued that gender identity and sexual orientation are natural parts of a person's identity and therefore would be protected by the Article 8(1) right to preserve a child's identity as recognised by law without unlawful interference.⁴⁶ Alternatively, she argued that a "right to self-determination of gender identity may be implied in article 16 which gives the child a right to protection against interference with his or her privacy".⁴⁷

Care and protection system involvement

As part of the Youth19 research programme the Adolescent Health Research Group produced six reports comparing outcomes between students who reported involvement with Oranga Tamariki and those who did not.⁴⁸ One of these reports focusses on rainbow and takatāpui young people.⁴⁹ The findings included that rainbow and takatāpui young people form 10% of the general high school and kura [Māori medium education] population in Youth19 but 15% of those involved with Oranga Tamariki.

Rates of involvement also differed across other demographic characteristics with takatāpui Māori twice as likely to be involved as young people from other ethnic groups, rates of involvement were also about four times higher for those in alternative education or not in education or training, and gender diverse young people also reporting higher rates of involvement than same or multiple sex attracted students.⁵⁰ Takatāpui and rainbow young people who had been involved with Oranga Tamariki also reported lower levels of feeling safe at home (67% as compared with 82.6% of cis-heterosexual young people who had been involved with Oranga Tamariki and 95.2% of cis-heterosexual young people who had not been involved with Oranga Tamariki),⁵¹ and significantly higher levels of violence and police discrimination.⁵²

The National Care Standards includes references to sexual and gender identity in the definition of 'identity and cultural needs',⁵³ the definition of 'cultural safety',⁵⁴ and in the provisions in

⁴⁵ Sandberg, K. (2015). The Rights of LGBTI Children under the Convention on the Rights of the Child. *Nordic Journal of Human Rights*, 33(4), 337-352.

⁴⁶ Ibid at 343. She acknowledged that this issue had not been considered by the Committee but also pointed out that the child's identity was defined as including sexual orientation in General Comment No 14 on best interests.

⁴⁷ Ibid at 344.

⁴⁸ Oranga Tamariki. (2022). *Youth19 Rangatahi Smart Survey reports*. <https://www.orangatamariki.govt.nz/about-us/research/our-research/youth19-rangatahi-smart-survey-reports/>

⁴⁹ King-Finau et al., *The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki*.

⁵⁰ Ibid at 7.

⁵¹ Ibid at 21.

⁵² Ibid at 27.

⁵³ [Oranga Tamariki \(National Care Standards and Related Matters\) Regulations 2018, r5.](#)

⁵⁴ Sexual and gender identity is also referred to in r30 which relates to the provision of support for a child or young person's assessed needs. In particular, any support provided should be provided "in a way that involves consideration of the cultural safety of the child or young person to whom support is provided" and cultural safety is defined as "the protection from any action that diminishes, demeans, or disempowers the cultural identity or well-being of an individual" including their gender, sexual orientation or gender identity: [Oranga Tamariki \(National Care Standards and Related Matters\) Regulations 2018, r30.](#)

relation to life skills assessments.⁵⁵ However, although the Independent Children's Monitor assesses compliance with the regulations in relation to life skills assessments, their data does not separate out sexuality and gender identity from other aspects of personal and sexual healthcare so it is unclear whether, and to what extent, Oranga Tamariki and other care providers comply with these aspects of the care standards.

Oranga Tamariki do not routinely collect data on whether young people in care are part of rainbow communities with the 2021 *Just Sayin'* survey being the first time that participating young people have been asked if they considered themselves part of LGBTQIA+/rainbow communities.⁵⁶ Of the 331 young people transitioning out of care who participated in the survey sixty-three (19%) considered themselves part of the LGBTQIA+/rainbow communities.⁵⁷ Point Research have recently been commissioned by the Oranga Tamariki Voices of Children and Young People's team to undertake a research study focussing on what rainbow and takatāpui care-experienced rangatahi want Oranga Tamariki to know about them and their experiences of care with the report due to be published in 2023.⁵⁸ It is hoped that this research starts to fill existing knowledge gaps.

Overseas research also found similar patterns of overrepresentation with research from the United States finding that 30% of young people living in foster care identified with a rainbow identity, compared to 11% of the general population.⁵⁹ United States research by Irvine & Canfield which explored the reasons for this over-representation found that the families' responses to their child's sexual or gender identity could lead to child protection system involvement with the two most common reasons rainbow youth come in contact with child welfare being high rates of physical abuse and conflict with parents.⁶⁰ Data from Irvine & Canfield's survey of young people in juvenile detention facilities also showed that lesbian, gay, bisexual, questioning youth were twice as likely as straight youth to have experienced physical abuse prior to being removed from their home by a social worker (18% versus 8%) and gender nonconforming and transgender youth were almost four times more likely to have experienced physical abuse prior to home removal than conforming youth (19% versus 5%). Gender nonconforming and transgender youth were also more likely to self-report running away or being kicked out of their home due to conflict with their parents prior to juvenile justice involvement (66% compared with 42%).⁶¹

Research overseas has also found that rainbow young people in foster care can also have more negative experience in care including increased placement disruptions; re-victimization by peers, foster parents, and child protection and youth justice system staff; lack of affirmation, experiences of misgendering and erasure of their sexual or gender identities; missed or

⁵⁵ [Oranga Tamariki \(National Care Standards and Related Matters\) Regulations 2018, r75.](#)

⁵⁶ Malatest International, [Just Sayin' survey: Understanding the transition needs of rainbow young people](#) at 4-6.

⁵⁷ Ibid at 5. A further forty (12%) were unsure and six (2%) identified as gender-diverse.

⁵⁸ Point Research. (2022). *The experience of Takatāpui and Rainbow rangatahi in care.* <https://www.point.co.nz/mahi/rainbow>

⁵⁹ Malatest International, [Just Sayin' survey: Understanding the transition needs of rainbow young people](#) at 6.

⁶⁰ Irvine, A. & Canfield, A. (2016). The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population. *Journal of Gender, Social Policy & the Law.* 24(2), 243-261 at 247.

⁶¹ Ibid at 247.

unidentified needs; few connections with supportive adults, and increased isolation, rejection, stigmatization, and harassment.⁶²

Education system

As discussed above, there has not been any focussed research on the justice needs of rainbow and takatāpui children and young people in Aotearoa. However, legal information resources developed by InsideOUT⁶³ and Rainbow Youth⁶⁴ give an indication of commonly experienced legal issues.⁶⁵ I also draw from other research and grey literature in relation to rainbow and takatāpui children and young people's experiences in education in Aotearoa before discussing overseas research and literature.

InsideOUT Kōaro's legal rights resource for rainbow and takatāpui young people discusses harassment and bullying; schools' legal obligations to keep students safe at school; issues for trans, gender diverse and intersex students including gender affirming bathroom access, uniforms and changing names; sports and physical education including getting changed and participation based on affirmed gender; the rules around setting up Queer Straight Alliances and Rainbow Diversity Groups; freedom of speech; school balls and displays of affection; and complaint processes.⁶⁶ InsideOUT have also raised concerns about how zoning and enrolment policies unintentionally force some gender-diverse students to enrol at single-sex schools, or schools that have not and are not likely to take steps towards making their schools safer for these students.⁶⁷

The Rainbow Rights in Aotearoa website was developed by Rainbow Youth and YouthLaw Aotearoa and contains information about legal rights related to being queer or gender diverse at or in work, home, relationships, school, healthcare, and online or in public spaces.⁶⁸ The page relating to rights in school covers very similar topics to the Inside Out resource including being outed at school, uniforms, changing rooms/toilets, overnight trips at school, treatment by teachers and other staff.⁶⁹

The Ministry of Education has also acknowledges that many of requests for support they receive from gender-diverse students and their whānau, including requests to move schools, come from students in co-ed school settings indicating that school policies and practices can prevent gender-diverse students from having their basic needs met (e.g. bathroom access) and engaging fully in education.⁷⁰

In a recent Youth19 survey, 1% of students that took part identified as transgender or non-binary (a further 0.6% of all students reported they were not sure of their gender). Of the transgender and non-binary students surveyed, 70% said they felt part of their school compared with 87%

⁶² Briggs, H.E. & Hoyt, K. (2019) LGBTQ youth of color in systems. In K. J. Conron & B. D. M. Wilson (Eds.), *LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda*. The Williams Institute at 46.

⁶³ InsideOUT Kōaro. (2021). *Legal Rights at School: A resource for rainbow young people in Aotearoa*. <https://insideout.org.nz/wp-content/uploads/2021/11/Legal-Rights-at-School.pdf>

⁶⁴ RainbowYOUTH and YouthLaw. (n.d.). *Rainbow rights in Aotearoa*. <https://rainbowrights.nz/>

⁶⁵ Neither resource explicitly sets out the basis for including these issues but it is reasonable to assume that they have done so on the basis that they are the commonly experienced by the young people each organisation supports.

⁶⁶ InsideOUT Kōaro, *Legal Rights at School: A resource for rainbow young people in Aotearoa*. <https://insideout.org.nz/wp-content/uploads/2021/11/Legal-Rights-at-School.pdf> at 4-5 (index).

⁶⁷ Sullivan-Tham, S. (2021). *Briefing Note: Access to co-education for gender-diverse students*. Ministry of Education at 3.

⁶⁸ RainbowYOUTH and YouthLaw. (n.d.). *Rainbow rights in Aotearoa*. <https://rainbowrights.nz/>

⁶⁹ RainbowYOUTH and YouthLaw. (n.d.). *School*. <https://rainbowrights.nz/school>

⁷⁰ Sullivan-Tham, *Briefing Note: Access to co-education for gender-diverse students* at 6.

of cisgender students⁷¹ and 23% of transgender students said that they had been bullied at school weekly or more often in the past year as compared with 5% cisgender students.⁷² Same sex or multiply attracted students also reported lower rates of feeling part of school (82.2% versus 87.1%) and higher rates of bullying (7.3% versus 4.9%), but the differences were less extreme.⁷³ Analysis of Youth19 survey also found that takatāpui and rainbow young people who had been involved with Oranga Tamariki were even more likely to have been bullied weekly or more in the last 12 months – 19.3% versus only 6.5% of takatāpui and rainbow young people who had not been involved with Oranga Tamariki and 9.7% of cis-heterosexual young people who had been involved with Oranga Tamariki.⁷⁴ Analysis of Youth19 data in relation to the experiences of rainbow rangatahi Māori also found inequities in feeling part of school and feeling safe at school.⁷⁵

Analysis of data from the Counting Ourselves survey also found high rates of bullying of trans and non-binary students with almost half (49%) reporting that they had been bullied at school in the last 12 months, more than a quarter had been bullied once or twice (28%), 10% had been bullied once a week, and 11% were bullied several times a week or most days.⁷⁶ More than a third of the 15–19-year-old participants in the Counting Ourselves survey had faced discrimination at school which is much higher than rate of 15–19-year-olds in the general population.⁷⁷ The Growing up in New Zealand longitudinal study also found that a greater proportion of children who did not identify as a binary gender experienced bullying more frequently.⁷⁸

A Human Rights Commission report on human rights issues relating to sexuality, gender identity and expression, and sex characteristics explains that unique forms of bullying of rainbow and takatāpui young people include outing or threatening to out a person, or questioning if someone is a 'real' girl or boy.⁷⁹ Rainbow and takatāpui young people who completed the Office of the Children's Commissioner's *What Makes A Good Life* survey also mentioned online bullying more frequently than other respondents.⁸⁰

⁷¹ Fenaughty et al., [A Youth19 Brief: Transgender and diverse gender students](#).

⁷² Ibid at 3.

⁷³ Ibid at 2.

⁷⁴ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 28.

⁷⁵ Greaves, L., Fleming, T., Roy, R., Fenaughty, J., Sutcliffe, K., & Clark, T. (2021). [A Youth19 Brief: Rainbow Rangatahi Māori](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland at 1.

⁷⁶ Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#) at 61. The Counting Ourselves survey is limited to trans and non-binary people so it does not allow for a direct comparison with the proportion of cis-gender youth who experience bullying. However, analysis of Youth19 data found that 4.5% of cis-gender youth who had not been involved with Oranga Tamariki reported being bullied weekly or more in the last 12 months.

⁷⁷ Ibid at 62. Veale et al make the comparison with the General Social Survey in which 13% of 15-19 year olds reported experiencing discrimination.

⁷⁸ Morton, S.M.B., Walker, C.G., Gerritsen, S., Smith, A., Cha, J., Atatoa Carr, P., Chen, R., Exeter, D.J., Fa'alili-Fidow, J., Fenaughty, J., Grant, C. Kim, H., Kingi, T., Lai, H., Langridge, F., Marks, E.J., Meissel, K., Napier, C., Paine, S., Peterson, E.R., Pilai, A., Reese, E., Underwood, L., Waldie, K.E, Wall, C. (2020). [Growing Up in New Zealand: A longitudinal study of New Zealand children and their families. Now We Are Eight](#). Growing Up in New Zealand at 126.

⁷⁹ New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2020). [Prism: Human rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics \(SOGIESC\) in Aotearoa New Zealand - A report with recommendations](#) at 49.

⁸⁰ Office of the Children's Commissioner & Ministry for Children. (2019). [What makes a good life? Children and young people's views on wellbeing](#) at 33.

In Aotearoa New Zealand school stand-down, suspension and exclusion data is not disaggregated by sexuality or gender identity so we do not have a clear picture of whether the over-representation of rainbow and takatāpui young people in bullying and discrimination statistics carries over into disciplinary action. However, overseas research has found that rainbow students are disproportionately face disciplinary action in school in comparison with their heterosexual and gender conforming peers.⁸¹

The research and literature identifies several factors that may contribute to these disparities, many of which are also appear to be present in Aotearoa New Zealand including the experience of victimisation. Rainbow young people's increased likelihood of being bullied can put them in greater contact with school authorities and increase their risk of discipline.⁸² In some cases young people who are the victim of bullying can be punished for defensive or pre-emptive violence.⁸³ Rainbow young people also report being blamed for their own victimisation for example, being told that their gender expression and presentation provokes bullying and that they should conform to societal expectations and norms in order to avoid bullying and harassment.⁸⁴ This response can result in students feeling alienated from their schools leading to absenteeism.⁸⁵ Students who are bullied at school can also miss school because they feel unsafe leading to disciplinary action for truancy.⁸⁶

Some overseas research has also found that rainbow youth appear to be sanctioned more harshly than heterosexual cisgender students for the same behaviour e.g. same-sex public display of affection (PDA) being punished more harshly or in a way that heterosexual PDA is not and girls not presenting in in sufficiently 'feminine' ways reported being treated as threatening or aggressive.⁸⁷ Participants in one study reported:⁸⁸

[T]eachers interpret and treat gender nonconformity as a disruption or a challenge to authority....Discipline disparities for GNC boys were also reported where a 'more feminine' boy is singled out and disciplined for something that other students in the class are also doing.

Schools may also can have official policies or unofficial practices that disproportionately target LGBTQ students and behaviours leading to a greater risk of school discipline.⁸⁹ Over half of LGBTQ students in a survey by GLSEN (55.5%) reported experiencing some type of LGBTQ-related discrimination at school, including being prevented from wearing clothing or items supporting LGBTQ issues (e.g., a t-shirt with a rainbow flag), being prevented from choosing to discuss or write about LGBTQ topics in class assignments and projects; being hindered in

⁸¹ Arredondo & Suarez, Ecological determinants of child welfare and juvenile justice involvement at 21; Himmelstein & Brückner, [Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study](#) at 54.

⁸² GLSEN. (2016). [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at x.

⁸³ Ibid at x; Burdge, H., Hyemingway, Z. T., Licon, A. C. (2014). [Gender Nonconforming Youth: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline](#). Gay-Straight Alliance Network; Crossroads Collaborative at the University of Arizona at 7.

⁸⁴ Burdge et al., [Gender Nonconforming Youth: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline](#) at 6-7.

⁸⁵ Ibid at 7.

⁸⁶ GLSEN, [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at x-xi.

⁸⁷ Arredondo & Suarez, Ecological determinants of child welfare and juvenile justice involvement at 21-22

⁸⁸ Burdge et al., [Gender Nonconforming Youth: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline](#) at 4.

⁸⁹ GLSEN, [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at xi.

forming or promoting a GSA or official school club supportive of LGBTQ issues, not being allowed to attend a school dance with someone of the same gender; being prevented from wearing clothing deemed ‘inappropriate’ based on their legal sex; being required to use the bathroom or locker room of their legal sex; being prevented from using their preferred name; and being disciplined for public affection that is not similarly disciplined among non-LGBTQ students.⁹⁰ GLSEN concludes:⁹¹

When LGBTQ students feel less safe, less comfortable, and less welcome in schools, they are more likely to miss school and to drop out. School policies that disproportionately affect LGBTQ students, such as gendered dress codes and rules about public displays of affection, also expose LGBTQ youth to greater rates of school discipline, and sometimes, as a result, involvement in the justice system.

Homelessness

There are no official statistics in Aotearoa to identify how many rainbow and takatāpui adults or young people are experiencing homelessness.⁹² However, a number of studies suggest that rainbow young people are more likely to experience homelessness and/or housing deprivation. The Youth19 survey found that secondary school aged rainbow and takatāpui youth report greater levels of housing deprivation than their peers (37.7% compared to 28.4%).⁹³ The survey also found that of this group, those who had been involved with Oranga Tamariki had even higher rates of housing deprivation and residential mobility.⁹⁴ The Counting Ourselves survey of transgender and gender-diverse New Zealanders found that 12% of youth respondents (14–24) had experienced homelessness, 15% of all respondents reported housing-related discrimination.⁹⁵ Internationally, it is estimated that 20–40% of those experiencing homelessness are LGBTIQ+ despite this group only making up 5–10% of the population.⁹⁶

Research by Fraser et al. on rainbow and takatāpui homelessness identified a number common themes in relation to experiences prior to homelessness, including: the pervasiveness of instability—especially regarding family relationships, finances, and housing; having to grow up fast due to social and material conditions; experiences of looking for housing in stressed markets; and systems failures that resulted in a lack of autonomy.⁹⁷ In particular, and consistent with the United States research discussed above, Fraser et al’s research found a significant association between homelessness and experience of formal or informal state care, involuntary mobility, and housing-related discrimination.⁹⁸ Another study in Aotearoa also found that being kicked out of home because of parental disapproval of their sexuality was one of the most common significant causes leading to rainbow and takatāpui young people becoming

⁹⁰ Ibid at x-xi.

⁹¹ Ibid at xiv.

⁹² Paul & Ratana, [Youth Homelessness in Tāmaki Makaurau, Aotearoa New Zealand](#) at 23.

⁹³ Clark et al., [Youth19 Housing Deprivation Brief](#) at 5. Housing deprivation is described as “a lack of access to minimally adequate housing”. Clark et al. describe the housing deprivation indicators used in the Youth19 survey at 1 and in the appendix.

⁹⁴ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 17.

⁹⁵ Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#).

⁹⁶ Fraser et al., [LGBTIQ+ Homelessness: A Review of the Literature](#) at 2.

⁹⁷ Fraser et al., “You’re so powerless”: Takatāpui/LGBTIQ+ people’s experiences before becoming homeless in Aotearoa New Zealand.

⁹⁸ Fraser et al., [Housing, Instability, and Discrimination amongst Takatāpui / LGBTIQ+ Youth in Aotearoa New Zealand](#) at 346. Fraser et al. use the phrase “involuntary mobility” to refer to informal situations where a person is forced to move before they are ready e.g. a landlord abruptly ending the tenancy agreement and/or a relationship breakdown.

homeless.⁹⁹ Research and literature overseas also identifies family conflict as a major, but not the only, driver of homelessness.¹⁰⁰ In particular, rainbow youth can also face discrimination in foster care and shelters with a lack of cultural competency, harassment, and abuse creating a hostile environment for youth who then choose to run away.¹⁰¹

Another housing related legal issue identified in Fraser's research was that many participants described many of their interactions whilst looking for housing as discrimination.¹⁰² Fraser notes that it was difficult to know whether "these interactions did involve overt discrimination, or if interviewees had perceived the situation this way due to the culmination of their past experiences, perceptions of others, and expectations of how they were going to be treated."¹⁰³

Another issue identified in overseas research and literature on rainbow youth homelessness is the closely interrelated risks of victimisation and justice system involvement. McCandless explains:¹⁰⁴

First, LGBT homeless youth often report fearing police when accessing shelters, worrying that workers may turn them in to the police and that police will force youths to return to abusive families. This issue is compounded in that without police assistance, few homeless LGBT youth will be able to find shelter (Kimble, 2015; Quintana, Rosenthal, & Krehely, 2010). Second, these youth may be more likely to interact with police due to the increased likelihood of their having used criminal behavior to survive. Youth risk detention for crimes related to homelessness, such as violating curfews and sleeping in public spaces (Hollywood Homeless Youth Partnership, 2010; National Runaway Switchboard, 2010; Quintana et al., 2010)... Third, police are often untrained to interact with LGBT persons, whether homeless or not. Trainings typically focus on containing risk, yet LGBT homeless youth experience risks beyond what police are trained to address (Dwyer, 2014b). One example is sex work. The justice system treats youth who engage in this work as deviants and criminals, not victims of sexual exploitation (Jekowsky, 2014). Lack of training is especially evident in police interactions with transgender individuals (Nolan, 2006), who often report police harassing them and using gendered language (Jenkins, 2015).

Discrimination

Fraser et al's research on rainbow and takatāpui youth homelessness also cites other research which found people were forced to hide their rainbow and takatāpui identity/ies to avoid discrimination in housing and job markets, and in social service organisations.¹⁰⁵ An analysis of legal need in the Victorian LGBTIQ community by the LGBTIQ Legal Service reported that

⁹⁹ Casey-Cox, A. (2018). [Youth homes: Building the village. Understanding the experiences of youth homelessness in Kirikiriroa](#). Poverty Action Waikato, Anglican Action, Methodist City Action and Te Whare O Te Ata.

¹⁰⁰ Greene, J. (2019) Homelessness. In K. J. Conron & B. D. M. Wilson (Eds.), [LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda](#). The Williams Institute at 33.

¹⁰¹ Ibid at 33-34.

¹⁰² Fraser et al., "You're so powerless": Takatāpui/LGBTIQ+ people's experiences before becoming homeless in Aotearoa New Zealand at 12.

¹⁰³ Ibid.

¹⁰⁴ McCandless, LGBT Homeless Youth and Policing at 560. See also Global Initiative on Justice with Children & Child Friendly Justice European Network. (2022). [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 18 for an international discussion of these issues.

¹⁰⁵ Fraser et al., "You're so powerless": Takatāpui/LGBTIQ+ people's experiences before becoming homeless in Aotearoa New Zealand at 17.

discrimination was their largest area of legal service provision at 24.44% of their legal casework (22 files) and 13.13% of legal advice (9 legal tasks and 65 legal advice).¹⁰⁶ 31.17% of respondents to a survey conducted as part of the legal needs analysis also reported experiencing a discrimination law issue in the last five years.¹⁰⁷ The LGBTIQ Legal Service also noted that the majority of the discrimination law enquiries related to gender identity, sexual orientation and disability¹⁰⁸ highlighting the intersectional nature of discrimination.

An affirmative practice guide by Open Doors Youth Service & Youth Advocacy Centre also identifies the intersectional nature of discrimination noting that QTIPOC (Queer, Trans, or Intersex, Person of Colour) young people also face discrimination based on race including having to confront racism and navigate micro-aggressions within white-dominated rainbow spaces.¹⁰⁹ They also highlight the specific challenges experienced by Aboriginal and Torres Strait Islander LGBTIQAP+ Sistergirl and Brotherboy people who have to navigate layered discrimination and trauma from the negative effects of colonisation including “dislocation from lands, genocide and violence, programs of assimilation and ...the repeated forcible removal of children” which is particularly relevant in the context of the child protection and criminal justice systems.¹¹⁰

A qualitative study of the legal needs of rainbow people in Western Canada found that participants had experienced discrimination and harassment in healthcare and educational institutions including inadequate care due to assumptions made on the basis of their sexual orientation and persistent homophobic and transphobic harassment at their post-secondary institution.¹¹¹ Some indigenous participants in this study also reported that their interactions with the legal system were shaped by both their gender identity and sexual orientation as well as by racism and settler colonialism.¹¹²

Criminal Justice system involvement

The criminal justice system in Aotearoa New Zealand does not systematically collect data in relation to sexual orientation or gender identity other than in relation to the gender binary.¹¹³ However, a number of studies have described rainbow and takatāpui young people’s experiences of discrimination in the criminal justice system. For example, the 2019 review of young people in police detention reported that submissions from young people described experiencing discrimination from Police on the basis of ethnicity, sexuality and gender.¹¹⁴ Analysis of the Youth19 survey found that levels of violence and police discrimination were high for takatāpui and rainbow young people and even higher again for those with Oranga Tamariki involvement.¹¹⁵ 19% of takatāpui and rainbow young people with Oranga Tamariki involvement

¹⁰⁶ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 26.

¹⁰⁷ Ibid at 1.

¹⁰⁷ Ibid at 26. The survey methodology is discussed at 24.

¹⁰⁸ Ibid at 26.

¹⁰⁹ Open Doors Youth Service & Youth Advocacy Centre. (2018). [Affirmative Practice Guide for Working with Sistergirl & Brotherboy Young People Experiencing Homelessness in Brisbane](#). Youth Advocacy Centre at 8.

¹¹⁰ Ibid at 9

¹¹¹ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 16.

¹¹² Ibid at 21.

¹¹³ For example see Ministry of Justice, [Youth Justice Indicators Summary Report](#).

¹¹⁴ Independent Police Conduct Authority, Human Rights Commission & Children’s Commissioner, [Joint thematic review of young persons in Police detention](#) at 41.

¹¹⁵ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 27. The figures are set out in a table on 28.

had been in trouble with the police in the last 12 months as compared with 17.8% of cis-heterosexual young people with Oranga Tamariki involvement, 2% of takatāpui and rainbow young people who had not had Oranga Tamariki involvement and only 1.7% of cis-heterosexual young people who had not had Oranga Tamariki involvement.¹¹⁶

One in 14 participants (7%) in the Counting Ourselves survey of trans and non-binary people in Aotearoa New Zealand had been detained, held in custody, arrested or charged by the police. Of those:¹¹⁷

- Almost two-thirds of these participants reported that police did not ask their correct name, pronoun or gender, and almost half had been misgendered when police knew their correct name, pronoun or gender but would not use it.
- More than half were not given any choice about whether a male or female officer searched them.
- Less than one in ten were given the choice of whether they were put in a police cell with women or men or on their own.
- Almost one-third were put in a cell with other people where they did not feel safe as a trans or non-binary person.
- Almost one in ten of these participants had been harassed or assaulted by police for being trans or non-binary.

Mitchell et al.'s review of the literature in relation to trans and gender diverse people's experiences in the criminal justice system describes how the historical criminalisation of same-sex sexual behaviours and gender nonconforming behaviours, unwarranted raids of LGBTIQ venues and covert and implicit policing practices that treat public expressions of same-sex or gender nonconforming desires as suspicious, risky, or implying make "LGBTIQ people less likely to seek justice from the criminal legal system, more vulnerable in their interactions with it, and more likely to become ensnared by it".¹¹⁸ Mitchell et al. also cite data from the United States in relation to the disproportionate rate at which trans and gender diverse people are incarcerated globally - approximately one in six trans and gender diverse people have been incarcerated at some point in their lives with the rate higher still for those people of colour and transgender women.¹¹⁹

Other research from the United States reports that while youth who identify as lesbian, gay, bisexual, trans-gender, or gender non-conforming comprise only 5 to 7 percent of the general population, they represent 13 to 15 percent of youth who come into contact with the juvenile justice system.¹²⁰ Once again, data suggests that girls are involved in the system at an even higher rate with a survey of 1,400 girls across seven jurisdictions finding that 40% of girls in the juvenile justice system are lesbian, gay, bisexual, trans-gender, or gender non-conforming (compared to 14 percent of boys).¹²¹ Another recent study by the Washington State Supreme Court Gender and Justice Commission cites similar figures reporting that the best available national evidence suggests that the rate of lesbian, gay, and bisexual (LGB) boys in detention is roughly proportional to the rate in the general population, but LGB girls may be

¹¹⁶ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 28.

¹¹⁷ Veale et al., [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#) at 79-80.

¹¹⁸ Mitchell et al., [Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System](#) at 102.

¹¹⁹ Ibid.

¹²⁰ Saar et al., [Sexual Abuse to Prison Pipeline: A Girl's Story](#) at 7.

¹²¹ Ibid.

disproportionately represented at 3.3 times the rate of the general population.¹²² The Movement Advancement Project also cite analysis of a national population-based survey that shows rainbow youth “were between 25% and 300% more likely than their non-LGBTQ peers to experience some sort of official sanction, ranging from being expelled from school, to being stopped by police, to being arrested or convicted as a juvenile or adult.”¹²³

Research and literature in the United States and the United Kingdom also describes how rainbow youth often take paths into the criminal justice system that are connected to their sexual orientation or gender identity such as experiencing homelessness due to family rejection or abuse centred on their gender and/or sexuality, or being arrested for committing survival crimes such as stealing or trespassing.¹²⁴ Saar et al cite by the National Council on Crime and Delinquency which found that gender non-conforming girls are especially vulnerable to juvenile justice involvement after contact with the child welfare system.¹²⁵ A study which surveyed youth in seven juvenile detention facilities found that “lesbian, gay, bisexual, questioning (“LGBQ”) or gender nonconforming and transgender (“GNCT”) youth in the juvenile justice system much more likely to have been removed from their home and to have been placed in a group or foster home than straight and gender conforming youth with some differences between the two subgroups:

- 11% percent of straight youth in the juvenile justice system had a history of being removed from their home by social workers compared to 30% of LGBQ youth;¹²⁶
- 3% of straight youth in the juvenile justice system had been previously placed in a group or foster home while 23% of LGBQ youth had;¹²⁷
- 10% percent of gender conforming youth had histories of being removed from their homes by social workers compared to 35% of GNCT youth;¹²⁸ and
- 4% of gender conforming youth had been previously placed in a group or foster home while 20% of GNCT youth had.¹²⁹

Irvine & Canfield point out that in the United States services for homeless youth are often gendered or religious-based which creates barriers for rainbow young people and can mean they may be driven to commit ‘survival crimes’ such as sex work, theft, or dealing drugs.¹³⁰ Irvine et al also cite research that LGB youth are more likely than non-LGB youth to be arrested and detained for status offences (e.g. running away, truancy) and survival crimes.¹³¹ However, it is unclear whether this overrepresentation reflects increased prevalence or a differential response from Police (or a combination of the two).

As Khan notes in her literature review in relation to the needs and what works for girls in the Children and Young People’s Secure Estate, very few studies have been completed into the

¹²² Washington State Supreme Court Gender and Justice Commission, [2021: How gender and race affect justice now](#) at 427.

¹²³ Movement Advancement Project and Center for American Progress, [Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth](#) at 4.

¹²⁴ Washington State Supreme Court Gender and Justice Commission, [2021: How gender and race affect justice now](#) at 427.

¹²⁵ Saar et al., [Sexual Abuse to Prison Pipeline: A Girl’s Story](#) at 25.

¹²⁶ Irvine & Canfield, The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population at 245.

¹²⁷ Ibid.

¹²⁸ Ibid at 246.

¹²⁹ Ibid.

¹³⁰ Ibid at 251-252.

¹³¹ Irvine et al., Juvenile Justice at 52.

experiences of rainbow children in secure settings but those that have been suggest that rainbow children may be more likely to:¹³²

[B]e expelled from school, to runaway, to be homeless and to be overrepresented in secure settings...be rejected by family...have experienced child abuse...have faced intersecting experiences of discrimination...face bullying and victimisation ...keep their identity and concerns private for fear of victimisation...self-harm than non-sexually minority girls....be seen as ‘aggressors’ and ‘predatory’ in custodial settings...ask for and seek, counselling than non-sexual minority peers.

Khan also cites research that rainbow children are particularly vulnerable in custody where they were seven times more likely to experience peer victimization compared with peers.¹³³

The Global Initiative on Justice with Children & Child Friendly Justice European Network describe LGBTI+ young people’s interaction with the police as a human rights issue that requires urgent attention because:¹³⁴

- *LGBTI+ young people have a lot of experience with police in public spaces and they are more likely to be victimised and to experience rejection from home and different form of homelessness.*
- *Disrespect can lead to criminalisation in different forms: the use of inappropriate and disrespectful language from the police can lead to reactions from youth that are eventually criminalised.*
- *Looking queer – where looking queer encompasses a range of different aspects – matters for young people and attracts more police attention and discriminatory responses.*
- *Stereotypes and internalized bias from the police towards LGBTI+ children and young people can lead to manipulation of the process for the sake of punishment.*
- *Police can have a large discretion which can lead to discriminatory interpretations of the law.*
- *Police often “simply” do not respond to LGBTI+ young people reports of crimes of which they are victims*
- *Homophobic and transphobic screening and profiling, as well as unjustified stop and search, or other discriminatory practices are still common within the police.*

The Global Initiative on Justice with Children & Child Friendly Justice European Network also raise concerns that once LGBTI+ children are in contact with the police they may face open disregard for gender identity and/or their sexual orientation e.g. through disrespectful misgendering and/or use of disrespectful language and name calling.¹³⁵ This kind of treatment can have a huge impact on children and young people’s emotional, psychological, and physical well-being of this population including triggering them to react to protect themselves further embedding them in the criminal justice system.¹³⁶ Finally, Global Initiative on Justice with

¹³² Khan, [Understanding the needs and what works for girls in the Children and Young People’s Secure Estate: Literature Review](#) at 36-37.

¹³³ Ibid at 38.

¹³⁴ Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 18.

¹³⁵ Ibid at 19.

¹³⁶ Ibid.

Children & Child Friendly Justice European Network cite research that judges are more likely to detain LGBTI+ youth for a range of potential reasons:¹³⁷

This may be related to the belief that the lack of family support - because of the gender identity and/or sexual orientation of the child - is the cause of the 'deviant' behaviour, in addition to the prejudices and stigma that place LGBTI+ youth as more aggressive. Criminalisation of survival strategies such as running away, selling drugs, prostitution, theft, fleeing to another country is another factor that leads to the detention of LGBTI+ children.⁶³ In addition, judges may believe that the detention centre would serve as a refuge from other hostile environments that the youth may be subjected to. These stereotypes, internalised biases and lack of alternative care and support put this population at great risk, and ultimately lead to their detention and harsh sentences.

Victimisation

The New Zealand Crime and Victims Survey relates to the population aged 15 and over and while it does provide data in relation to the experiences of people with diverse sexualities and by age bands,¹³⁸ data is limited in relation to young people with diverse sexualities. As a result, I have also included findings in relation to adults in this discussion. Findings include that:

- Both male and female adults with diverse sexualities were significantly more likely to have been victims of sexual assault than adults overall;¹³⁹
- People with diverse sexualities were almost three times as likely as heterosexual people to experience offences by family members (5.8% vs 2.0%). Bisexual adults' prevalence rate was even higher at 8.6%.¹⁴⁰
- People with diverse sexualities were over three times as likely and bisexual adults were almost five times as likely as heterosexual people to have experienced intimate partner violence in the previous 12 months.¹⁴¹
- Bisexual adults were four times as likely to be highly victimised compared with the New Zealand average.¹⁴²

The Youth19 survey found that levels of violence were high for all takatāpui and rainbow young people and higher again for those with Oranga Tamariki involvement as set out in the table below.¹⁴³ The proportion of rainbow and takatāpui young people who reported that they had been treated unfairly by the police in the last 12 months was also significantly higher which is of concern given that perceptions of police unfairness are likely to influence reporting behaviour.

¹³⁷ Ibid at 21-22.

¹³⁸ The NZCVS also collects information on gender identity, with respondents able to self-select "male", "female", or "gender diverse": Ministry of Justice, [Survey findings - Cycle 4 report Descriptive statistics, June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 77, fn 10. However, the Cycle 4 report does not include any data in relation to gender diverse people.

¹³⁹ Ibid at 110-111.

¹⁴⁰ Ibid at 123.

¹⁴¹ Ibid.

¹⁴² Ibid at 176.

¹⁴³ King-Finau et al., [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#) at 27. The figures are set out in a table at 28.

Table 1 Levels of violence experienced by young people involved with Oranga Tamariki

	Takatāpui and rainbow		Cis-heterosexual	
	Never involved with Oranga Tamariki	Been involved with Oranga Tamariki	Never involved with Oranga Tamariki	Been involved with Oranga Tamariki
Been deliberately hit or physically harmed in last 12 months*	52.4%	68.3%	48.8%	59.8%
Been hit or physically harmed by an adult at home in last 12 months	13.3%	30.5%	9.3%	22.3%
Experienced sexual violence, abuse or unwanted sexual experiences	31.7%	56.0%	15.0%	31.4%
Been treated unfairly by the police because of their ethnicity in last 12 months	2.0%	11.4%	1.7%	4.5%

The Counting Ourselves survey found that “[t]rans and non-binary participants felt unsafe at rates that were similar to women in the general population, and they were three to five times less likely to feel safe than men in the general population.... Youth were more likely to feel unsafe or very unsafe than older participants in all three of the places we asked about.”¹⁴⁴ A Netsafe study also found that since 2018 LGB+¹⁴⁵ participants’ have been more likely to receive unwanted digital communications than heterosexuals with large increases in the sending and receiving of such communications in 2020.¹⁴⁶

Research overseas has also found that the rainbow community experience increased rates of victimisation although more research is needed. For example, the Australian Child Maltreatment study found that people who identified in gender diverse ways were more likely to experience all types of child maltreatment.¹⁴⁷ A 2010 survey of 1,094 diverse LGBTI respondents in

¹⁴⁴ Veale et al., *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand* at 76.

¹⁴⁵ Netsafe explained that while they collect response data from people identifying with non-binary gender identities, the number of participants was too small to allow for statistically relevant analysis which is why the term LGB+ is used and not LGBTQIA+: Netsafe. (2021). *Online harm increasing in Aotearoa’s rainbow community*. <https://www.netsafe.org.nz/wp-content/uploads/2016/12/Netsafe-rainbow-release.pdf> at 3.

¹⁴⁶ Ibid at 1.

¹⁴⁷ Haslam, D., Mathews, B., Pacella, R., Scott, J.G., Finkelhor, D., Higgins, D.J., Meinck F., Erskine, H.E., Thomas, H.J., Lawrence, D. & Malacova, E. (2023). *The prevalence and impact of child*

Queensland found that “the most common forms of harassment faced by LGBTI Queenslanders included verbal and written abuse, threats of physical violence, physical attack, sexual assault and property damage” with males outnumbering females in all forms of victimisation in the survey and transgender people being particularly targeted.¹⁴⁸ The Law Council of Australia also cites research by the Australian Institute of Family Studies which identified ‘significant levels’ of sexual harassment and sexual violence experienced by LGBTI people as well as the need for further research in this area.¹⁴⁹

A recent survey in Australia which explored the sexual violence experiences of LGBTQ+ people in New South Wales asked participants whether the perpetrator/s identified as LGBTQ+ with responses finding an almost even split (51% said that they were members of the community and 49% said that they were not).¹⁵⁰ Participant responses varied by gender with 77% of cis men reporting that the perpetrator identified as LGBTQ+, whereas responses from all other genders varied from 54% (n=7) for trans men to 31% (n=24) for cis women.¹⁵¹ The authors concluded that this variability by gender suggests different responses may be needed for different parts of the LGBTQ+ community and that mainstream sexual violence prevention must also be inclusive of LGBTQ+ people and their needs. The study also found that many victim survivors believed that sexism (30% of participants) and identity based prejudice (28% of participants) were key drivers of violence against them.¹⁵² In particular, written responses of some respondents suggested that perpetrators believed in LGBTQ+ stereotypes leading to ‘corrective rape’.¹⁵³

Research in the United States also found that rainbow children and young people were also victimised in the child welfare and criminal justice systems with one study finding that LGBTQ youth of colour reporting biased treatment from foster parents, group home supervisors, case workers, and shelter staff ranging from verbal abuse to physical and sexual assault as well as staff ignoring or condoning attacks by other residents in housing programs and sometimes even calling the police to arrest the LGBTQ victim.¹⁵⁴ The Global Initiative on Justice with Children & Child Friendly Justice European Network also report that rainbow children and young people are particularly vulnerable to trafficking but their vulnerabilities are rarely recognised when they come into contact with police officers.¹⁵⁵

Access to gender-affirming healthcare

Another area of legal need for trans and gender-diverse children and young people is access to gender-affirming healthcare and in particular, puberty blockers.¹⁵⁶ This issue has been the subject of litigation in both Australia and the United Kingdom, particularly in relation to children

[maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report](#). Australian Child Maltreatment Study, Queensland University of Technology at 21.

¹⁴⁸ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 15.

¹⁴⁹ *Ibid* at 17.

¹⁵⁰ Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 22.

¹⁵¹ *Ibid*.

¹⁵² *Ibid* at 23.

¹⁵³ *Ibid*.

¹⁵⁴ Greene, Homelessness at 34 citing Ventimiglia, N. (2012). LGBT Selective Victimization: Unprotected Youth on the Streets Homelessness. *Journal of Law in Society*, 13, 439-454.

¹⁵⁵ Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 19.

¹⁵⁶ Puberty blockers are a medicine that can be used to halt the progress of potentially unwanted puberty-related physical changes: Te Whatu Ora. (2023). *Transgender New Zealanders*. <https://www.tewhātuora.govt.nz/keeping-well/transgender-new-zealanders#:~:text=Puberty%20blockers%20are%20a%20medicine,fully%20explore%20gender%20health%20options>.

and young people's ability to consent to this form of medical treatment.¹⁵⁷ I am not aware of similar litigation in Aotearoa New Zealand but there has been increasing controversy about the use of puberty blockers,¹⁵⁸ and the Ministry of Health has said it will publish an evidence brief in May 2023.¹⁵⁹ It may be that litigation will follow.

¹⁵⁷ For example, the *Bell v Tavistock* litigation in the United Kingdom: [Bell & Anor v The Tavistock and Portman NHS Foundation Trust](#) [2020] EWHC 3274; [Bell & Anor v The Tavistock and Portman NHS Foundation Trust](#) [2021] EWCA Civ 1363. While the Tavistock gender identity clinic was ultimately successful in the Court of Appeal, it has now closed following a highly critical review of the care it provided: The Cass Review. (2022) [Independent review of gender identity services for children and young people: Interim report](#). See also Jowett, S., Dimopoulos, G., & Kelly, F. (2022). [Reforming the Law on Consent to Medical Treatment for Trans Youth: A Renewed Call for Legislative Intervention](#). *Laws*, 11(4), 56; and Smith, M. K. (2023). [Leading Gillick Astray? An Analysis of the Law of Consent Relevant to Trans and Gender Diverse Minors and the Commencement of Gender-Affirming Hormone Treatment](#). *Laws*, 12(2), 26; Taylor-Sands, M. M., & Dimopoulos, G. (2022) [Judicial Discomfort over 'Innovative' Treatment for Adolescents with Gender Dysphoria](#), *Medical Law Review*, 30(3), 479–508 for a discussion of the litigation in Australia and the United Kingdom.

¹⁵⁸ For example, see Hill. R. (2022, September 29) Puberty blocker use jumps as expert backs results. *Radio New Zealand*. <https://www.rnz.co.nz/news/national/475757/puberty-blocker-use-jumps-as-expert-backs-results> and information released under the Official Information Act: Ministry of Health. (2022). *Information regarding puberty blockers*. <https://www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests/information-regarding-puberty-blockers>

¹⁵⁹ Rivers, J. (2023, April 24). Jan Rivers: Questions mount around the use of puberty blockers for children. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/jan-rivers-questions-mount-around-the-use-of-puberty-blockers-for-children/JVKMNIUYUVBXDPCFPYSNZ34RWE/>

Barriers

Rainbow people can experience many of the same barriers as everyone else. For example, a Canadian study in relation to legal problems faced by rainbow people in Western Canada identified a number of practical barriers that are common to many seeking legal advice including a “lack of clarity about legal systems and processes, financial barriers, the disproportionate burden of proof placed on participants, and lack of response or slow timelines within legal processes”.¹⁶⁰

Rainbow people also experience additional barriers relating to their identity and/or experiences. For example, the LGBTIQ Legal Service identify three main barriers to accessing legal services: “a deep mistrust of the justice system, lack of community specific or appropriate services, and lack of information about available services.”¹⁶¹ Open Doors Youth Service & Youth Advocacy Centre’s affirmative practice guide describe the barriers that LGBTIQAP+ Sistergirl and Brotherboy young people face when seeking housing support many of which will also apply to seeking legal support including:¹⁶²

- Fear of and actual negative experiences with services;
- Trauma related to negative attitudes from faith-based communities;
- Perceived and actual discrimination and pathologisation;
- Lack of safety due to violence and harassment;
- Lack of gender appropriate facilities such as bathrooms;
- Misgendering (referring to someone with the wrong pronouns, name, gender as well as overly gendered language);
- Heterosexist language (assumptions that everyone is heterosexual); and
- Services having limited knowledge about rainbow identities.

These barriers are discussed in more detail below.

Attitudinal Barriers

Attitudes of others about rainbow people

The Law Council of Australia attribute the unique barriers faced by rainbow people to homophobia, transphobia and heterosexism.¹⁶³ They explain:¹⁶⁴

In the Coming Forward survey a large number of respondents cited homophobia and heterosexism as barriers to reporting or seeking assistance when they were victimised; others cited fear of the police engaging in ‘hetero-male ridicule’ or said police would make their gender history public, out them to their parents, or be indifferent to their needs.¹⁷² Speaking Out similarly found that LGBTI+ people felt that if they reported, the ‘incident would not be taken seriously’ and many believed that ‘justice would not occur’.¹⁷³ One older person told the survey: ‘Let’s face it. Police are police’.¹⁷⁴

¹⁶⁰ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 5.

¹⁶¹ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 1.

¹⁶² Open Doors Youth Service & Youth Advocacy Centre, [Affirmative Practice Guide for Working with Sistergirl & Brotherboy Young People Experiencing Homelessness in Brisbane](#) at 13.

¹⁶³ Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 22.

¹⁶⁴ Ibid at 23.

Internalised homophobia can also contribute to belief in myths around sexual assault and family violence which operate as barriers to recognising and reporting victimisation e.g. the misconception that men can't be raped or that women are non-violent can both inhibit recognition of abuse and its reporting if it is recognised.¹⁶⁵

Participants a Canadian study in relation to legal problems faced by rainbow people in Western Canada discussed how for sexual- and gender-minority people are othered or rendered invisible in legal processes that assume people are cisgender, heterosexual, monogamously coupled, and part of nuclear family structures.¹⁶⁶ Researchers found that homophobia was a continuous thread across participants' legal experiences with some participants connecting legal barriers to the history of state-sanctioned homophobia.¹⁶⁷ Others described experiencing negative stereotypes about sexual-minority people when engaging with the police that discredited or minimized their experience including the feeling that the police did not take domestic abuse claims within same-sex/same-gender couples seriously.¹⁶⁸

Attitudinal barriers can be particularly challenging for victims of domestic and sexual violence of all genders. For example, the marginalisation of same-sex relationships can mean that both the community and survivors are to report victimization.¹⁶⁹ A United States study exploring family members' reactions to young queer women's disclosures of sexual abuse found family reactions were more extreme and disparaging of queer survivors' sexual identities to the extent that they may pose barriers to accessing formal services.¹⁷⁰

A series of assumptions or stereotypes about gender and sexuality can also operate as barriers to disclosure. For example, the idea that all men, including gay and bisexual men, have unlimited sexual appetites can prevent the recognition of victimhood.¹⁷¹ Similarly, Guadalupe-Diaz and Jasinski describe how gendered assumptions about victimization meant that many of the participants in their study were not believed because they were "too butch" or they were "once a man".¹⁷²

Research in the United States found that rainbow young people often face discriminatory attitudes in the justice system including the assumption that they are sexual predators or wish to have frequent sex and the attitude that rainbow young people should expect a certain level of harassment.¹⁷³ Another US study found that survivors perceived to be in same-sex relationships were ten to thirty times more likely to be arrested along with their abusive partners as survivors in relationships with someone perceived to be of a different gender.¹⁷⁴

¹⁶⁵ Ibid at 26.

¹⁶⁶ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 23-24.

¹⁶⁷ Ibid at 24.

¹⁶⁸ Ibid at 26.

¹⁶⁹ Guadalupe-Diaz & Jasinski, "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence at 785.

¹⁷⁰ Bedera, N., Nordmeyer, K., & Holland, K. J. (2022). "I Could Never Tell My Parents": Barriers to Queer Women's College Sexual Assault Disclosure to Family Members. *Violence Against Women*. <https://doi.org/10.1177/10778012221101920>.

¹⁷¹ Gaspar, M., Skakoon-Sparling, S., Adam, B.D., Brennan, D.J., Lachowsky, N.J., Cox, J. Moore, D., Hart, T.A. & Grace, D. (2021). ["You're Gay, It's Just What Happens": Sexual Minority Men Recounting Experiences of Unwanted Sex in the Era of MeToo](#). *The Journal of Sex Research*, 58(9), 1205-1214 at 1206.

¹⁷² Guadalupe-Diaz & Jasinski, "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence at 789.

¹⁷³ McCandless, LGBT Homeless Youth and Policing at 559.

¹⁷⁴ Lippy, C. & Waters, E.M. (2021). *"I didn't think people would take me seriously": The Help-Seeking Strategies, Experiences, and Preferences of LGBTQ Survivors of Domestic Violence*. National LGBTQ Institute on Intimate Partner Violence at 4-5.

Gaspar et al. describe how ignoring the differences between gay and bisexual men's sexual practices fundamentally differ from heterosexual norms can potentially overstate the degree of sexual and reproduce the idea that gay sex is dangerous, "the exact opposite of what gay and queer liberation politics aims to do".¹⁷⁵ Gaspar et al. also raise concerns about the "culture of silence" obscuring GBM sexual violence and critiques of the normalization of unsolicited "dick pics" and a culture of assumed consent and entitlement noting that silence on the issue of sexual misconduct "does not tackle homophobia", rather it normalizes everyday forms of violence against sexual minorities".¹⁷⁶

Nearly half of respondents in a US survey of LGBTQ youth engaged in survival sex in New York City reported that their experience with the court system was negative with many reporting that judges, prosecutors, and court officers refused to use correct pronouns or names or made negative comments about their gender identity, gender expression or sexual orientation.¹⁷⁷ Several participants in another survey of LGBTQ+ youth involved in Washington State's youth justice and child protection systems also reported experiencing discrimination by court professionals due to their identity including one who said a judge gave him the most severe, longest sentence possible for his crime and cited the youth's sexual orientation as the reason.¹⁷⁸

Attitudes held by rainbow people

The most recent iteration of the New Zealand Crime and Victims Survey included a module which asked a series of questions in relation to people's perception of the Police.¹⁷⁹ Of interest, bisexual people were the demographic group who differed significantly from the New Zealand average in their responses to the statement that police staff reflect the diversity of all people in New Zealand being significantly more likely to disagree.¹⁸⁰ Bisexual people also had significantly lower levels of high trust and confidence in the police¹⁸¹ and gender diverse people were significantly more likely to disagree that there was a suitable police presence in their community.¹⁸² The NZCVS report also notes that over the last four cycles of the NZCVS, if the victim perceived an incident to be at least partly driven by discriminatory attitudes towards their sexuality, they were significantly less likely to report that incident to the Police, with only 15% of incidents of this kind reported as compared with the average reporting rate (25%).¹⁸³ Media reports in relation to the New Zealand Crime and Victims Survey results quoted Tabby Beasley the Executive Director of InsideOUT who explained that the lack of trust between rainbow communities and the justice system was due to negative experiences.¹⁸⁴

LGBTIQ Legal Service legal needs analysis found that LGBTIQ people frequently feel anxiety in their interactions with police, due to their collective and individual lived experience of

¹⁷⁵ Gaspar et al., ["You're Gay, It's Just What Happens": Sexual Minority Men Recounting Experiences of Unwanted Sex in the Era of MeToo](#) at 1206.

¹⁷⁶ Ibid at 1206-1207.

¹⁷⁷ Movement Advancement Project and Center for American Progress, [Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth](#) at 18.

¹⁷⁸ Ibid. See also Washington State Supreme Court Gender and Justice Commission, [2021: How gender and race affect justice now](#) at 427.

¹⁷⁹ Evidence Based Policing Centre. (2022). [New Zealand Crime and Victims Survey: Police Module Results](#). New Zealand Police.

¹⁸⁰ Ibid at 20.

¹⁸¹ Ibid at 12.

¹⁸² Ibid at 23.

¹⁸³ Ministry of Justice, [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 160.

¹⁸⁴ Cornish, S. & Gourley, E. (2022, June 29). 'Work is needed': Sexual assault reporting stuck at below 10%, survey finds. [Stuff](#). <https://www.stuff.co.nz/national/129104659/work-is-needed-sexual-assault-reporting-stuck-at-below-10-survey-finds> InsideOUT are an NGO supporting rainbow and takatāpui young people.

homophobic and transphobic police responses which reduces the likelihood they will report incidents to police or seek victims of crime assistance.¹⁸⁵ Responses to their survey which asked participants whether they agreed with the statement 'If I had to report a crime where I was the victim, I feel confident the police at my local station would assist me' were fairly evenly split - 35% either disagreed or strongly disagreed and 43% either agreed or strongly agreed.¹⁸⁶

The Law Council of Australia cite a series of surveys which have all found that rainbow people are significantly less likely than other victims of crime to report harassment or violence including one survey which found that 84 per cent of young LGBTI people who had been victimised chose not to report it to the police.¹⁸⁷ A 2020 survey of trans and gender diverse people explored the reasons that people were reluctant to report with participants citing "police corruption, bullying, negligence, indifference, and refusal to take situations seriously as factors influencing them not to report".¹⁸⁸ Some participants also described attempting to report but being dismissed, treated insensitively or disrespectfully, or refused help.¹⁸⁹ Another recent study also identified similar barriers with the authors concluding "[v]ictim-survivor's views of police and the legal system greatly impacted on whether they would report an incident".¹⁹⁰

The Law Council of Australia also highlighted the "deep historical mistrust" that LGBTI people feel toward the justice system "as a result of laws that criminalised homosexuality and the police history of perpetrating homophobic violence against LGBTI people".¹⁹¹ In an Australian survey a large number of respondents cited homophobia and heterosexism as barriers to reporting and one in seven respondents "identified fear or something very close to fear, as a major barrier to their reporting acts of heterosexist violence or same sex partner abuse".¹⁹² The Law Council of Australia also found that many LGBTI people also fear that they will face institutional discrimination if they pursue a legal remedy citing a *Speaking Out* respondent who expressed fear that reporting would make the harassment worse and that he would have to face more homophobia from legal professionals.¹⁹³

More recently, the results of the Victorian Pride Lobby's Police Attitudes Survey indicate the LGBTIQ+ community's attitude toward police is one of distrust combined with "an overwhelming sense that police treat certain groups unfairly".¹⁹⁴ The results included:¹⁹⁵

- 2 in 3 LGBTIQ+ Victorians do not think the police are generally helpful and supportive.
- 3 in 4 do not think the police can be trusted to use their powers reasonably.

¹⁸⁵ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 35. Also has a series of quotes from survey participants.

¹⁸⁶ Ibid. Also has a series of quotes from survey participants.

¹⁸⁷ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 21. Another recent survey found a similarly high rate of 86% of participants not reporting their experience of sexual victimisation: Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 34.

¹⁸⁸ Mitchell et al., [Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System](#) at 104.

¹⁸⁹ Ibid.

¹⁹⁰ Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 35.

¹⁹¹ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 22 citing Victorian Royal Commission into Family Violence. (2016). *Volume V: Report and Recommendations* at 151.

¹⁹² Leonard, W., Mitchell, A., Patel, S., & Fox, C. (2008). [Coming forward: The underreporting of heterosexist violence and same sex partner abuse in Victoria Monograph Series Number 69](#). The Australian Research Centre in Sex, Health & Society, La Trobe University at 58-59.

¹⁹³ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 23 citing Berman & Robinson. (2010). *Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland*. Australian Academic Press at 126.

¹⁹⁴ Victorian Pride Lobby. (2021). [Upholding our rights LGBTIQ+ attitudes towards and experiences of policing in Victoria](#) at 5.

¹⁹⁵ Ibid at 8.

- 1 in 2 do not trust the police with their personal information.
- 9 in 10 LGBTIQ+ Victorians think the police treat certain groups unfairly, with 2 in 3 believing LGBTIQ+ people are treated unfairly.
- 4 in 5 believe the police abuse their powers, and that they harass or intimidate some groups without cause.
- 3 in 5 believe the police show an inherent lack of respect toward LGBTIQ+ people.

As the report writers argue: [a]ttitudes also matter because they translate into actions”.¹⁹⁶ The authors also argue that it is important to consider the link between attitudes and direct experiences noting that the survey results presented in the report are “based on respondents’ personal experiences with police, accounts from family and friends, witnessing police actions at LGBTIQ+ events, and hearing about police in the media.”¹⁹⁷ They also highlight the collective experience explaining that “one anti-LGBTIQ+ direct experience can often affect the perceptions of the police by the LGBTIQ+ community as a whole”.¹⁹⁸

Only 16% of participants in a survey exploring LGBTQ+ people’s perceptions of sexual violence in rainbow communities agreed or strongly agreed that LGBTQ+ people are believed when they speak out about the sexual violence with the vast majority (75%) indicating they thought that LGBTQ+ people are not believed and 76% agreeing or strongly agreeing that LGBTQ+ people are blamed.¹⁹⁹ The study author concluded that it is highly likely that concerns about being believed or blamed results in people not disclosing their experiences.²⁰⁰

Participants a Canadian study in relation to legal problems faced by rainbow people in Western Canada reached similar findings with participants frequently perceiving legal institutions as inherently homophobic or transphobic and researchers describing the connection between prior experiences, both their own and those in the wider community, and perceptions of the police:²⁰¹

The discrimination, exclusions, human rights violations, and violence enacted against many sexual- and gender-minority individuals often led to a recognition of many legal institutions as being systemically homophobic, transphobic, and racist. ...participants’ perceptions of legal systems were not only shaped by their individual experiences, but by the experiences of other sexual- and gender-minority people within this system. Thus, individual experiences can be accentuated by longer histories of harm inflicted on their communities by the legal system and its various institutions.

Research in the United States has also found that many LGBTQ survivors are reluctant to report abuse “because of fear or direct experience of receiving homophobic, racist, ableist, and/or transphobic bias, harassment, or violence”.²⁰² A European study cited by the Global Initiative on Justice with Children & Child Friendly Justice European Network found that “only 4% of the harassment incidents were reported by victims to the police by 15-17 year-olds” with the most common reasons not to report including “thinking that the police would not or could not do anything; not trusting the police; or fear of a homophobic and/or transphobic reaction if they

¹⁹⁶ Ibid at 9-10.

¹⁹⁷ Ibid at 10-11.

¹⁹⁸ Ibid.

¹⁹⁹ Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 45.

²⁰⁰ Ibid at 51.

²⁰¹ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 40-42.

²⁰² Lippy & Waters, “I didn’t think people would take me seriously”: *The Help-Seeking Strategies, Experiences, and Preferences of LGBTQ Survivors of Domestic Violence* at 4-5.

reported to the police”.²⁰³ Furthermore, “LGBTI+ children not only do not report to the police, but they very rarely report to any other support person, for the fear of lack of understanding and/or the use of inappropriate language by professionals.⁷² Similarly, they fear the reaction of their family when stating their needs.”²⁰⁴

The Law Council of Australia also identified the fear of being ‘outed’ as a barrier to reporting including young people being concerned about being kicked out of their family home if their sexuality becomes known as a result of reporting.²⁰⁵ A number of studies have also found that some rainbow people do not report so as not to draw negative attention to LGBTI communities, as this may fuel homophobic and heterosexist beliefs.²⁰⁶ Layard et al. discussed the negative consequences reporting that participants in their survey “expressed fear of retribution either from within LGBTQ+ communities or the ‘mainstream’ Australian population, if sexual violence in LGBTQ+ communities was discussed openly, which reinforced stigma and shame.”²⁰⁷

Structural / Systemic Barriers

Cultural competence

The 2016 Victorian Access to Justice Review found that rainbow people can face barriers when accessing legal services, complaint-handling bodies, and the courts due to a lack of sensitivity to their needs e.g. being asked probing questions about their gender identity or sexuality, using the wrong pronouns or a more general lack of awareness / knowledge.²⁰⁸ The review authors also noted that young trans people raised concerns that they needed to spend significant time educating professionals about what it means to be transgender when they were seeking support.²⁰⁹ The LGBTI Justice Working Group informed the Review that there is a lack of specialised and culturally appropriate legal services and resources for LGBTI community members.²¹⁰

The Victorian Royal Commission into Family Violence also found that police often fail to identify family violence when it involves same-sex relationships and some members of the judiciary lack awareness about rainbow identities and relationships, and can treat rainbow people less seriously than they do heterosexual people in similar circumstances.²¹¹ The Law Council of Australia also found that legal services are not always welcoming to rainbow people at the outset such as by assuming that all clients are heterosexual or not providing appropriate options on client intake forms.²¹² Not knowing whether service providers will be sensitive to their needs and a fear of homophobia and ignorance from mainstream services can also dissuade LGBTI people from taking action.²¹³

Participants in Mitchell et al’s survey of trans and gender diverse people identified a number of problems in terms of lawyers’ ability to work for trans and gender diverse people starting with a lack of understanding of, and respect for, trans and gender people including not knowing how

²⁰³ Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 19.

²⁰⁴ Ibid at 25.

²⁰⁵ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 24-25.

²⁰⁶ Law Council of Australia. (2017). [LGBTI People: Consultation Paper](#) at 20; Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 33.

²⁰⁷ Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 57.

²⁰⁸ Victoria State Government, [Access to Justice Review \(Full report\)](#) at [3.3.8].

²⁰⁹ Ibid at 181.

²¹⁰ Ibid.

²¹¹ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 26 citing Victorian Royal Commission into Family Violence. (2016). *Volume V: Report and Recommendations* at 140.

²¹² Ibid at 28.

²¹³ Ibid.

to address them or perform basic courtesies like using correct names and pronouns.²¹⁴ Participants also reported that lawyers needed to better understand, and know how to respond to, trans and gender diverse people's unique needs and vulnerabilities when interacting with the criminal legal system.²¹⁵ The Victorian Pride Lobby survey raised similar issues about the police with 4 in 5 LGBTIQ+ Victorians saying they do not think the police understand the issues that impact them and 3 in 4 saying they do not think the police make an effort to understand the issues facing different groups with whom they come into contact.²¹⁶

Participants in the Canadian research discussed above also raised the same lack of understanding with the authors concluding that the "lack of sexual-minority cultural competence and sensitivity in the legal system resulted in participants feeling that this system was not meant to serve or support them."²¹⁷ "Irvine-Baker and colleagues raised concerns that the needs of LGBTQ+ children, were neglected in justice delivery which was rooted in binary and more normative understandings of gender and sexuality."²¹⁸

Gender disparities were also raised in the recent report of the Independent Review Panel commenting:²¹⁹

Some submitters raised concerns about whether the legal profession is welcoming to Rainbow and gender diverse people, suggesting that "the legal profession unconsciously excludes queer and gender non-conforming people.

The system is not made for us

Te Puna Aonui's list of Family Violence and Sexual Violence Service Gaps currently open for consultation notes that there is a need "to build mainstream capability to prevent binary gendered responses and re-traumatisation of LGBTQI+ victims" as well as a significant need for tailored LGBTQIA+ and trans family and sexual violence services.²²⁰

Guadalupe-Diaz & Jasinski note that domestic violence services have traditionally focussed on the needs of heterosexual women which creates barriers for both lesbian women and gay male survivors.²²¹ This barrier can be particularly acute for those with multiple marginalised identities. For example, few, if any, services are specifically available to deal with the intersectional risks of being LGBT and young with those working in mainstream services often being insufficiently trained to understand the unique issues these youths face and they may act discriminatorily against them whether deliberately or inadvertently.²²² Te Puna Aonui also identify the "specific underrepresentation for those with intersecting identities and needs" such as trans people /

²¹⁴ Mitchell et al., [Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System](#) at 105.

²¹⁵ Ibid.

²¹⁶ Victorian Pride Lobby, [Upholding our rights LGBTIQ+ attitudes towards and experiences of policing in Victoria](#) at 8.

²¹⁷ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 32.

²¹⁸ Khan, [Understanding the needs and what works for girls in the Children and Young People's Secure Estate: Literature Review](#) at 38.

²¹⁹ Independent Review Panel. (2023). [Regulating Lawyers in Aotearoa New Zealand: Te Pae Whiritahi i te Korowai Rato Ture o Aotearoa](#). New Zealand Law Society at 172.

²²⁰ Te Puna Aonui. (2023). [List of Family Violence and Sexual Violence Service Gaps. https://tepunaaonui.govt.nz/assets/Other-Agencies/FVSV-gaps-list-for-public-consultation_March-2023.pdf](#) at 4.

²²¹ Guadalupe-Diaz & Jasinski, "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence at 4.

²²² McCandless, LGBT Homeless Youth and Policing at 559.

Irawhiti, takatāpui, migrants and former refugees, MVPFAFF / Pacific people and intersex people.²²³

80% of participants in a survey regarding LGBTIQ people's legal needs said that they would prefer to get legal help from a specialist LGBTIQ legal service citing a series of factors centred around such a service having a greater understanding service users' needs and the impact of previous experiences of discrimination which made it difficult to trust mainstream services.²²⁴ The authors of the survey report concluded that a "specialist LGBTIQ Legal Service that employs members of LGBTIQ communities, including Aboriginal and Torres Strait Island, multicultural and multifaith and diversely able, is best equipped to meet the diverse legal needs of Victorian LGBTIQ communities".²²⁵

Practical barriers

Lack of knowledge

The Law Council of Australia's consultation paper on the legal needs of LGBTI people found that there is little research on LGBTI people's civil legal needs but LGBTI people are often unaware of their legal rights in areas related to family law, wills and property, which may inhibit help-seeking behaviour.²²⁶ The cost of legal services can also be a barrier for many LGBTI people, especially trans and gender diverse people who may have more complex needs.²²⁷

Intersectional Barriers

The Law Council of Australia also identifies what it describes as 'Intersectional Barriers' explaining that rainbow people who experience intersectional disadvantage, such as people with a culturally and linguistically diverse background, disabled people, and those living in remote and rural areas, may be even less likely to access legal services.²²⁸ Particular concerns were raised about rainbow people with intellectual disabilities in care/support settings who are initially marginalised by their disability then by their sexual orientation or gender expression leaving them powerless and subject to disproportionate control over their relationships.²²⁹

The Victorian Royal Commission into Family Violence found that LGBTI people who are also a part of other marginalised groups may be at greater risk of experiencing family violence and be less likely to access help.²³⁰ As the Australian Human Rights Commission has argued rainbow Aboriginal and Torres Strait Islander people experience a number of significant and intersecting points of discrimination and marginalisation including "structural, institutional and interpersonal forms of discrimination based on race, gender, colonialism and SOGII status."²³¹ They conclude that these unique challenges "cannot be readily or appropriately addressed through generic services targeting the LGBTI community, or the Aboriginal and Torres Strait Islander communities".²³²

²²³ Te Puna Aonui. *List of Family Violence and Sexual Violence Service Gaps* at 4-5.

²²⁴ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 43.

²²⁵ Ibid.

²²⁶ Law Council of Australia, [LGBTI People: Consultation Paper](#) at 17.

²²⁷ Ibid.

²²⁸ Law Council of Australia, [The Justice Project: Final Report Part 1 LGBTI+ People](#) at 30-32.

²²⁹ Ibid at 30.

²³⁰ Victorian Royal Commission into Family Violence. (2016). [Volume V: Report and Recommendations](#). Author at 144.

²³¹ Australian Human Rights Commission. (2015). [Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights](#) at 60.

²³² Ibid at 61.

A Canadian study raises similar issues noting that:²³³

Participants' legal experiences were thus not only shaped by their sexual orientation, but also by other intersecting aspects of their identities or how others perceived them (e.g., their race/ethnicity, Indigeneity, and gender identity) and associated structures of power [64]. These forces shaped participants' experiences both outside of and within legal systems, cut across multiple legal domains, and often contributed to participants initially pursuing legal recourse.

Numerous studies in the United States describe the intersectional disadvantages experienced by LGBTQ children of colour in the education, child protection and youth justice systems.²³⁴ For example, African-American, Latino/a, and Multiracial LGBTQ students experience higher rates of school discipline,²³⁵ and LGBTQ youth of colour are overrepresented in the child protection and youth justice systems,²³⁶ are more likely to be detained for non-serious offenses,²³⁷ and “report particularly pervasive and sexualized patterns of discrimination, profiling, and violence by law enforcement and juvenile justice authorities”.²³⁸ Irvine et al criticise the usual practice of considering different aspects of young people’s separately rather than looking at patterns jointly by both sexuality and gender identity, and race-ethnicity arguing:²³⁹

This practice overlooks racism in examining the inequities and experiences of system-involved LGBTQ youth of color. Likewise, research on racial inequities in the juvenile justice system rarely engages the experiences of LGBTQ youth as relevant in understanding patterns of inequitable treatment and in informing advocacy responses.

GLSEN also note that LGBTQ students with disabilities are at greater risk for school discipline and dropping out; and are more likely to be involved with criminal or juvenile justice system as a result of school discipline experiences.²⁴⁰

²³³ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 21.

²³⁴ GLSEN, [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at xiv; Thomas, D. (2019) On Childhood Studies. In K. J. Conron & B. D. M. Wilson (Eds.), [LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda](#). The Williams Institute at 17; Irvine & Canfield, The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population at 254; Irvine et al., Juvenile Justice at 53.

²³⁵ GLSEN, [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at xiv.

²³⁶ Thomas, On Childhood Studies at 17; Irvine & Canfield, The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population at 53.

²³⁷ Thomas, On Childhood Studies at 17.

²³⁸ Irvine et al., Juvenile Justice at 53.

²³⁹ Ibid at 53.

²⁴⁰ GLSEN, [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#) at xiv.

Possible Solutions

Introduction

In this section I discuss some possible solutions or ways of addressing some of the barriers to access raised in the research and literature from Aotearoa New Zealand and overseas. It is not a complete analysis, nor an attempt to identify ways to resolve all the access to justice challenges experienced by rainbow and takatāpui children and young people. This report should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.²⁴¹

Service delivery

Mitchell et al.'s research study exploring trans and gender diverse people's experiences with the Victorian criminal justice system asked participants to identify services, or improvements to current services, that were required to address their needs.²⁴² Some participants advocated for establishing cultural competency and cultural safety across the service landscape, others argued for specialist services, and a third group supported a combination of the two:²⁴³

Multiple participants argued for a hybrid approach. For example, one participant suggested that there should be 'more LGBTIQ targeted services [as well as] more training and specific teams within existing services to target/assist LGBTIQ clients.' Meanwhile, another participant wrote that while 'mainstream services need to be better equipped to show a basic level of understanding and respect towards TGD people,' lawyers with TGD clients 'urgently need more funding for TGD specific programs.'

Research in the United States and Canada has also identified the importance of both specialist services and generalist services being more accessible. For example, a United States study in relation to the help-seeking strategies, experiences, and preferences of LGBTQ survivors of domestic violence found most would prefer to seek services "at LGBTQ-specific agencies, and they receive more welcoming and helpful services when they do".²⁴⁴ However, Lippy et al. also found that most LGBTQ survivors who sought formal services did so at non-LGBTQ agencies. They reported that survivors "repeatedly identified the need for providers to be knowledgeable about LGBTQ identities, communities, and contexts" and stressed that being open and tolerant is not enough, services must "commit the time, energy, and resources to develop the necessary cultural knowledge and skills to serve LGBTQ survivors" and "ensure that their offerings, policies, and practices align with the needs and experiences of LGBTQ survivors."²⁴⁵

In late 2022 the Global Initiative on Justice with Children & Child Friendly Justice European Network released a challenge paper *Towards LGBTI+ sensitive justice systems for children in Europe* recommending that governments should both "design and fund legal advocacy services to provide specific support for LGBTI+ young people in conflict with the law" and ensure that all services and departments working with children include "specialised professionals aware and

²⁴¹ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

²⁴² Mitchell et al., *Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System* at 9.

²⁴³ Ibid.

²⁴⁴ Lippy & Waters, *"I didn't think people would take me seriously": The Help-Seeking Strategies, Experiences, and Preferences of LGBTQ Survivors of Domestic Violence* at 46.

²⁴⁵ Ibid at 47.

sensitised on LGBTI+ issues, with the aim to mainstream the specific LGBTI+ component within the overall gender dimension".²⁴⁶ Although the wording is less explicit, this seems to be another endorsement of a combined approach of providing both specialist services and ensuring that mainstream services are more sensitive to the needs of rainbow children and young people. The challenge paper also makes a number of other recommendations including that that governments should develop holistic assessment protocols and tools which take into account diverse sexualities and gender expression, and adopt other inclusive approaches such as forms that allow children to indicate their gender identity and preferred name and pronouns.²⁴⁷

Make mainstream services more accessible

The first aspect of a combined approach is to make mainstream services more accessible. Victoria Legal Aid's Guide for lawyers representing children in child protection proceedings contains a section in relation to providing supportive representation to LGBTIQ+ young people much of which is also of general relevance:²⁴⁸

- *be familiar with key terms and concepts related to sexual and gender identity and intersex status, and services and support for LGBTIQ+ young people*
- *recognise that it is the right of LGBTIQ+ young people to choose whether they disclose their sexual or gender identity or intersex status, and never force someone to disclose their identity*
- *ask the child which name and pronoun they would prefer the lawyer to use, and consistently use these in communication with and about the young person*
- *where a young person discloses their sexual or gender identity or intersex status, discuss with them how this may be relevant to the court's decision-making, and whether it is something they wish to be shared with the court*
- *only disclose the young person's sexual or gender identity or intersex status to the court, other parties, and other professionals where the young person has given consent*
- *explore with the young person whether they would like to be connected to LGBTIQ+ support services, and take steps to refer them directly if the young person does not want their identity or status to be shared with other parties*
- *recognise that a young person may change how they identify their gender or sexuality, including their preferred name and/or pronoun, and respond supportively if this occurs.*

The VLA Guide also points to the need for lawyers to be alert to specific challenges that rainbow children and young people may experience in the child protection system including poor mental health due to discrimination and abuse regarding their sexual or gender identity; rejection by family members; not feeling accepted or safe in out of home care; and difficulty engaging with services that may not acknowledge or support their identity or status.²⁴⁹

²⁴⁶ Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 30.

²⁴⁷ Ibid.

²⁴⁸ Victoria Legal Aid. (2019). [Representing children in child protection proceedings: A guide for direct instructions and best interests lawyers](#) at 35.

²⁴⁹ Ibid at 34.

An affirmative practice guide developed by Open Doors Youth Service & Youth Advocacy Centre in Australia sets out a series of quick but effective changes that can make services more welcoming.²⁵⁰

- Display posters, flags and brochures indicating that the service respects and supports rainbow children and young people;
- Designate at least one clearly signed gender inclusive bathroom if possible. If this isn't possible, label bathrooms to reflect facilities rather than gender e.g. bathroom with urinals, bathroom with sanitary bin;
- Replace Male / Female options on forms with either a blank space for self-identification or expanded options;
- Add a pronoun field to forms (she/her, he/him, they/them, and other) and use pronouns in email sign-offs;
- Add a statement supporting rainbow communities in email sign off and on website / social media profiles; and
- Acknowledge significant annual events for the rainbow community

The practice guide also identifies medium and longer term actions including reviewing intake procedures, policies and practice documentation to ensure that they comply with human rights obligations and are inclusive and affirming of diverse sexualities and genders, providing a clear complaints pathway for addressing discriminatory experiences with staff or other young people accessing the service, providing ongoing training and guidance for staff, volunteers and board members, recruiting staff with rainbow affirming attitudes and practices, developing partnerships with rainbow organisations, and co-designing changes with rainbow young people.²⁵¹

The Law Council of Australia also outlined similar welcoming strategies in their consultation paper on the legal needs of LGBTI people as well as suggesting the creation of specialist advocacy roles.²⁵² I am not aware of any similar guidance in Aotearoa New Zealand but both InsideOUT and Rainbow Youth offer a range of resources including free posters and guides to terminology and allyship.²⁵³ InsideOUT Kōaro also offer training to organisations make workplaces and more inclusive for rainbow & takatāpui people.²⁵⁴

Participants in a Canadian qualitative study in relation to the legal needs of sexual- and gender-minority people also emphasised the importance of ensuring mainstream legal materials include sexual-minority people's experiences e.g. by including "non-cisheteronormative families in divorce materials."²⁵⁵

Tailored / specialist services & resources

A series of reviews and research studies in Australia, the United States and Canada have considered how to meet the legal needs of the rainbow community both generally and in specific

²⁵⁰ Open Doors Youth Service & Youth Advocacy Centre, [Affirmative Practice Guide for Working with Sistergirl & Brotherboy Young People Experiencing Homelessness in Brisbane](#) at 15-19.

²⁵¹ Ibid at 17.

²⁵² Law Council of Australia, [LGBTI People: Consultation Paper](#) at 40.

²⁵³ InsideOUT. (n.d.). *For Workplaces*. <https://insideout.org.nz/for-workplaces/>; Rainbow Youth. (n.d.). *Order resources*. <https://ry.org.nz/order-resources> & Rainbow Youth. (n.d.). *Information & resources*. <https://ry.org.nz/info-resources>

²⁵⁴ InsideOUT, *For Workplaces*. InsideOUT offer free (Government funded) rainbow and takatāpui competency training to the mental health and addiction workforce.

²⁵⁵ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 46.

contexts such as the criminal justice system and domestic violence.²⁵⁶ A consistent theme was the need for tailored, specialist services. For example, in 2016 the Victorian State Government identified the need for increased legal advice and assistance for LGBTI people and recommended a proposed Pride Centre include the provision of “tailored and specialist legal information, education, referrals, and legal advice to lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) people and to deliver LGBTI cultural competency training to legal service providers”.²⁵⁷ Two years later the Law Council of Australia also recommended that State and territory governments should “support, fund and expand” specialist LGBTI+ legal services to provide advocacy, legal information, and community legal education.²⁵⁸

A legal needs analysis carried out by the providers of an LGBTQIA+ legal service pilot program in Victoria in 2020 made similar findings and recommendations including finding that:²⁵⁹

Due to lived experiences of discrimination, criminalisation, violence and exclusion, LGBTIQ people feel most comfortable accessing a specialist LGBTIQ service with staff who are part of the LGBTIQ community...A specialist LGBTIQ Legal Service that employs members of LGBTIQ communities, including Aboriginal and Torres Strait Island, multicultural and multifaith and diversely able, is best equipped to meet the diverse legal needs of Victorian LGBTIQ communities.

The report recommended the establishment of a permanent and expanded specialist LGBTIQ Legal Service led by a steering committee including “multi-disciplined members of diverse community groups, with varied lived experience”, working in partnership with peer-led groups, and resourced to respond to a range of legal needs and “strategically and effectively” in law reform.²⁶⁰

In March 2023 funding was announced for a new legal service for LGBTIQ communities in Victoria, Q+ Law to be operated by Fitzroy Legal Service in partnership with Queerspace.²⁶¹ Q+Law will provide in-person and remote legal advice and services as well as legal education, training and resources for LGBTIQ+ people and upskilling for legal professionals to enable them to meet the specific legal needs of the LGBTIQ+ community. It will deliver services at the

²⁵⁶ Victoria State Government, [Access to Justice Review \(Full report\)](#); Law Council of Australia, [LGBTI People: Consultation Paper](#); LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#); Mitchell et al., Criminalising Gender Diversity: Trans and Gender Diverse People’s Experiences with the Victorian Criminal Legal System.

²⁵⁷ Victoria State Government, [Access to Justice Review \(Full report\) Report and Recommendations Volume 1](#) at 191.

²⁵⁸ Law Council of Australia, [Recommendations and Group Priorities](#) at 20.

²⁵⁹ LGBTIQ Legal Service, [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program](#) at 43.

²⁶⁰ Ibid. The report also recommended “2. Funding and other support for legal service providers, advocacy organisations, health and support services and community groups to continue and expand existing specialist or targeted LGBTIQ services in response to local legal need

3. Delivery of legal education and information, awareness-raising and capacity-building training to legal service providers, court staff, prison staff, Corrections Victoria, Victoria Police, as well as LGBTIQ communities, including people in prison, in partnership with peer led community groups, community leaders and/or advocacy organisations

4. Further research towards a more thorough and detailed analysis of the legal needs of Victorian LGBTIQ communities, produced in partnership with a university and/or Victorian Government, as well as peer-led community groups and/or advocacy organisations.”

²⁶¹ Victoria State Government. (2023). *Landmark Legal Service For Victoria’s LGBTIQ+ Communities*. <https://www.premier.vic.gov.au/landmark-legal-service-victorias-lgbtqi-communities>. Queerspace is an LGBTIQ+ health and wellbeing support service: Queerspace. (2023). *Home*. <https://www.queerspace.org.au/#>.

Victorian Pride Centre and other community sites, including Queerspace and Your Community Health.²⁶²

Lippy et al.'s research in the United States also identified the unique needs of multiply marginalized survivors arguing that "programs must also ensure that they do not perpetuate other biases against LGBTQ survivors, such as racism, classism, or bi- or transphobia."²⁶³ Participants in the Canadian qualitative study cited above made a similar point, commenting that supports need to be intersectional given "the complexities of sexual- and gender-minority people's identities and experiences".²⁶⁴ The authors' recommendations included both "resources specifically for sexual- and gender-minority people" which "include information on sexual- and gender-minority people's rights when engaging legal systems and avenues for redress if they feel that their rights have been transgressed".²⁶⁵ They also concluded that there was a need for more organisations and peer support for sexual and gender-minority people navigating the justice system including to provide "LGBTQ2+-competent emotional and social support" for people dealing with legal issues.²⁶⁶

In Australia there are two specialist legal services, the Victorian programme referred to above and the LGBTI Legal Service in Queensland. The LGBTI Legal Service was established in 2010 and provides "access to justice and legal assistance to all Queenslanders within the LGBTIQA+ community."²⁶⁷ There are also rainbow specific services within generalist legal services including the Inner City Legal Centre's LGBTIQ legal advice,²⁶⁸ Trans and Gender Diverse Legal Service,²⁶⁹ and the Safe Relationships Project.²⁷⁰ Similar programmes also operate in other countries including some specifically focussed on children and young people such as Lambda Legal's Youth and Schools programme in the United States.²⁷¹

I am not aware of any similar services within community law centres in Aotearoa New Zealand. However, I am personally aware of some community law centre lawyers who have particular expertise relating to legal issues affecting the rainbow community. Rainbow Youth also

²⁶² Queerspace. (2023). *Q+Law: A New Legal Service With and for LGBTIQA+ Communities*. <https://www.queerspace.org.au/qlaw-new-legal-service-lgbtiqa-communities/>.

²⁶³ Lippy & Waters, "I didn't think people would take me seriously": *The Help-Seeking Strategies, Experiences, and Preferences of LGBTQ Survivors of Domestic Violence* at 42.

²⁶⁴ Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 46-47.

²⁶⁵ *Ibid* at 6.

²⁶⁶ *Ibid* at 46-47.

²⁶⁷ LGBTI Legal Service. (n.d.). *About the LGBTI Legal Service*. <https://lgbtilegalservice.org.au/about-us/>

²⁶⁸ The LGBTIQ legal advice service is a statewide legal advice service for the LGBTIQ community which provides advice on same sex parenting, surrogacy, de facto relationships, discrimination, homophobic or other violence and vilification, neighbourhood disputes, domestic violence and employment: Inner City Legal Centre. (2023). *LGBTIQ legal advice*. <https://www.iclc.org.au/our-services/lgbtiq-legal-advice/>

²⁶⁹ The Trans and Gender Diverse Legal Service is a service for transgender and gender diverse people experiencing legal problems operated in partnership with Dentons one day per week including an appointment-based legal clinic: Inner City Legal Centre. (2023). *Trans and Gender Diverse Legal Service*. <https://www.iclc.org.au/our-services/trans-and-gender-diverse-legal-service/>

²⁷⁰ The Safe Relationships Project provides court assistance and other support for people who are gay, lesbian or bisexual, people who are transgender, and people who are intersex and are experiencing or escaping an abusive relationship: Inner City Legal Centre. (2023). *Safe Relationships Project* <https://www.iclc.org.au/our-services/safe-relationships-project/>

²⁷¹ Lambda Legal. (n.d.). *Youth and Schools*. <https://www.lambdalegal.org/issues/schools>. The Lambda Legal works for respect and acceptance of rainbow youth, adult professionals and rainbow-headed families in schools and other organised youth activities, such as the Boy Scouts

partnered with YouthLaw to develop the Rainbow Rights website²⁷² and InsideOUT Kōaro have produced a resource in relation to the rights of rainbow and takatāpui students in school.²⁷³

Diversity and representation

Some research in other jurisdictions has also identified the importance of representation of members the community in the police, legal profession and the judiciary.²⁷⁴ The reasons included building trust and engagement in the police,²⁷⁵ proving access to professionals who understand the unique challenges facing diverse sexual- and gender-minority communities through lived experience,²⁷⁶ and that representation in the judiciary has a significant impact on the experiences of gay court users and employees.²⁷⁷

One of the participants in the Community-Based Research Centre's qualitative study described his own experience of seeking legal advice and the difference it made to have a lawyer who had also had similar experiences as a gay man:²⁷⁸

The only reason that I had support that I did was because the lawyer was a gay man... like I had mentioned I'd gone through my employee assistance program, the lawyers that I had spoken to, my impression – and I mean they're not going to admit it – my impression is that because it was related to the gay stuff – God this pisses me off, I'm [age] years old and it's just stupid, people... sorry. So, he took an interest in it and backed it because he knew it was a fact, he himself had healthcare issues and had access issues to healthcare, but he knew from experience that this is and had been an issue for a long time.

Another participant suggested that a list of queer-identifying lawyers would be of benefit: “[t]here would be huge benefits to society and to us LGBTQ folks to have a support they can call upon when encountering various aspects of our legal systems... perhaps there’s a list of queer-identifying lawyers out there”.²⁷⁹ There is an LGBTIQ+ Law Association in Australia,²⁸⁰ but I am not aware of similar organisations in New Zealand other than on University campuses.²⁸¹ Rainbow Path can also provide referrals to “rainbow competent” lawyers working in refugee and immigration law.²⁸²

Training

The research and literature also identifies the need for training on the rights and needs of rainbow children and young people with particular attention to transgender and intersex

²⁷² RainbowYOUTH & YouthLaw. (n.d.). *Rainbow rights in Aotearoa*. <https://rainbowrights.nz/>

²⁷³ InsideOUT Kōaro, *Legal rights in school: A resource for rainbow young people in Aotearoa*.

²⁷⁴ Law Council of Australia, *LGBTI People: Consultation Paper* at 40; Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 5, 36 & 40.

²⁷⁵ Law Council of Australia, *LGBTI People: Consultation Paper* at 40.

²⁷⁶ Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 5.

²⁷⁷ Law Council of Australia, *LGBTI People: Consultation Paper* at 40.

²⁷⁸ Community-Based Research Centre, *Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study* at 36.

²⁷⁹ *Ibid* at 46.

²⁸⁰ Pride in Law. (2017-2022). *About us*. <https://www.prideinlaw.org/>

²⁸¹ For example Rainbow Law at the University of Auckland which is an LGBTIQ students' group: <https://www.facebook.com/groups/643309829022502/>

²⁸² For example Rainbow Path NZ. (n.d.). *Legal Support*. <https://rainbowpathnz.com/legal-support/>

children²⁸³ or as the Law Council of Australia put it, “LGBTI cultural competency training”.²⁸⁴ The training should include pronoun use,²⁸⁵ defining terms relevant to LGBT youth,²⁸⁶ exploring myths and stereotypes,²⁸⁷ interrelated forms of bias and prejudice including HIV stigma, transphobia, homophobia, cisheterosexism, settler colonialism, and structural racism,²⁸⁸ and guide staff on respectful and equitable service to LGBT youth²⁸⁹ including the use of LGBTI+ sensitive language.²⁹⁰ Snyder et al. also raise the need for widely disseminated and discussed non-discrimination policies which could also form part of training.²⁹¹

Continuing professional development

As with other professionals discussed above, there is also a need for gender and sexuality training for lawyers supported by appropriate resources. For example, submitters to the Law Council of Australia’s Justice Project raised the need for dedicated resources for lawyers and supported the development of a nationwide professional development package for lawyers on gender inclusivity and overcoming discrimination.²⁹²

Public education

Given the way attitudes both about rainbow communities and within rainbow communities can operate as a barrier to accessing justice many studies emphasise the need to change these attitudes. For example, Layard et al. recommend:²⁹³

Prevention initiatives that celebrate LGBTQ+ people and address cisgenderism and heteronormativity are supported. Initiatives seek to influence both attitudes within LGBTQ+ communities, and attitudes about LGBTQ+ people amongst cis heterosexual populations.

²⁸³ Snyder, S.M., Hartinger-Saunders, R., Brezina, T., Beck, E., Wright, E. R., Forge, N., & Bride, B. E. (2016). Homeless youth, strain, and justice system involvement: An application of general strain theory. *Children and Youth Services Review*, 62, 90-96 at 94; Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 31; Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 64-65.

²⁸⁴ Victoria State Government, [Access to Justice Review \(Full report\)](#) at 181.

²⁸⁵ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 5.

²⁸⁶ Snyder et al., Homeless youth, strain, and justice system involvement: An application of general strain theory at 94.

²⁸⁷ Ibid.

²⁸⁸ Community-Based Research Centre, [Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study](#) at 5.

²⁸⁹ Snyder et al., Homeless youth, strain, and justice system involvement: An application of general strain theory at 94.

²⁹⁰ Global Initiative on Justice with Children & Child Friendly Justice European Network, [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#) at 31.

²⁹¹ Snyder et al., Homeless youth, strain, and justice system involvement: An application of general strain theory at 94.

²⁹² Law Council of Australia, [The Justice Project: Final Report Part 2 Legal Services](#) at 43.

²⁹³ Layard et al., [LGBTQ+ peoples experiences and perceptions of sexual violence](#) at 65.

References

- Arredondo, M. & Suarez, M. (2019). Ecological determinants of child welfare and juvenile justice involvement. In K. J. Conron & B. D. M. Wilson (Eds.), [*LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda*](#). The Williams Institute.
- Bedera, N., Nordmeyer, K., & Holland, K. J. (2022). "I Could Never Tell My Parents": Barriers to Queer Women's College Sexual Assault Disclosure to Family Members. *Violence Against Women*. <https://doi.org/10.1177/10778012221101920>
- Briggs, H. E. & Hoyt, K. (2019). LGBTQ youth of color in systems. In K. J. Conron & B. D. M. Wilson (Eds.), [*LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda*](#). The Williams Institute.
- Burdge, H., Hyemingway, Z. T., Licona, A. C. (2014). [*Gender Nonconforming Youth: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline*](#). Gay-Straight Alliance Network; Crossroads Collaborative at the University of Arizona.
- Casey-Cox, A. (2018). [*Youth homes: Building the village. Understanding the experiences of youth homelessness in Kirikiriroa*](#). Poverty Action Waikato; Anglican Action; Methodist City Action; Te Whare O Te Ata.
- Clark, T.C., Drayton, B., Ball, J., Schwenke, A., Crengle, S., Peiris-John, R., Sutcliffe, K., Fenaughty, J., Groot, S., & Fleming, T. (2021). [*Youth19 Housing Deprivation Brief*](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland.
- Community-Based Research Centre. (2021). [*Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study*](#). Department of Justice Canada.
- Evidence Based Policing Centre. (2022). [*New Zealand Crime and Victims Survey: Police Module Results*](#). New Zealand Police.
- Fenaughty, J., Sutcliffe, K., Fleming, T., Ker, A., Lucassen, M., Greaves, L., and Clark, T. (2021). [*A Youth19 Brief: Transgender and diverse gender students*](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland.
- Fraser, B., Pierse, N., Chisholm, E., & Cook, H. (2019). LGBTIQ+ Homelessness: A Review of the Literature. *International Journal of Environmental Research and Public Health*, 16(15), 2677. <https://doi.org/10.3390/ijerph16152677>
- Fraser, B., Chisholm, E. & Pierse, N. (2021). "You're so powerless": Takatāpui/LGBTIQ+ people's experiences before becoming homeless in Aotearoa New Zealand. *PLoS ONE* 16(12), e0259799. <https://doi.org/10.1371/journal.pone.0259799>
- Fraser, B., Jiang, T., Cordue, H., & Pierse, N. (2022). Housing, Instability, and Discrimination amongst Takatāpui/LGBTIQ+ Youth in Aotearoa New Zealand. *Youth*, 2(3), 339–351. <https://doi.org/10.3390/youth2030025>
- Gaspar, M., Skakoon-Sparling, S., Adam, B.D., Brennan, D.J., Lachowsky, N.J., Cox, J., Moore, D., Hart, T.A. & Grace, D. (2021). [*"You're Gay, It's Just What Happens": Sexual Minority Men Recounting Experiences of Unwanted Sex in the Era of MeToo*](#), *The Journal of Sex Research*, 58(9), 1205-1214.

Gerber, P. & Timoshanko, A. (2021). Is the UN Committee on the Rights of the Child Doing Enough to Protect the Rights of LGBT Children and Children with Same-Sex Parents? *Human Rights Law Review*, 21(4), 786-836.

Global Initiative on Justice with Children & Child Friendly Justice European Network. (2022). [Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper](#).

GLSEN. (2016). [Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth](#).

Greaves, L., Fleming, T., Roy, R., Fenaughty, J., Sutcliffe, K., & Clark, T. (2021). [A Youth19 Brief: Rainbow Rangatahi Māori](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland.

Greene, J. (2019). Homelessness. In K. J. Conron & B. D. M. Wilson (Eds.), [LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda](#). The Williams Institute.

Guadalupe-Diaz, X. L., & Jasinski, J. (2017). "I wasn't a priority, I wasn't a victim": Challenges in help seeking for transgender survivors of intimate partner violence. *Violence Against Women*, 23(6), 772–792.

Haslam, D., Mathews, B., Pacella, R., Scott, J.G., Finkelhor, D., Higgins, D.J., Meinck F., Erskine, H.E., Thomas, H.J., Lawrence, D. & Malacova, E. (2023). [The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report](#). Australian Child Maltreatment Study, Queensland University of Technology.

Himmelstein, K.E.W. & Brückner, H. (2011). [Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study](#), *Pediatrics*, 127(1), 49-57.

Independent Police Conduct Authority, Human Rights Commission & Children's Commissioner. (2012). [Joint thematic review of young persons in Police detention](#). Independent Police Conduct Authority.

Independent Review Panel. (2023). [Regulating Lawyers in Aotearoa New Zealand: Te Pae Whiritahi i te Korowai Rato Ture o Aotearoa](#). New Zealand Law Society.

InsideOUT Kōaro. (2021). [Legal Rights at School: A resource for rainbow young people in Aotearoa](#).

Irvine, A. & Canfield, A. (2016). The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population. *Journal of Gender, Social Policy & the Law*, 24(2), 243-261.

Jowett, S., Dimopoulos, G., & Kelly, F. (2022). [Reforming the Law on Consent to Medical Treatment for Trans Youth: A Renewed Call for Legislative Intervention](#). *Laws*, 11(4), 56.

Khan, L. (2021). [Understanding the needs and what works for girls in the Children and Young People's Secure Estate: Literature Review](#). Centre for Mental Health.

King-Finau, T., Archer, D., Fenaughty, J., Sutcliffe, K., Clark, T., & Fleming, T. (2022). [The health and wellbeing of takatāpui and rainbow young people who have been involved with Oranga Tamariki](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland.

Law Council of Australia. (2017). [LGBTI People: Consultation Paper](#).

- Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 LGBTI+ People.](#)
- Law Council of Australia. (2018). [The Justice Project: Final Report Part 2 Legal Services.](#)
- Law Council of Australia. (2018). [Recommendations and Group Priorities.](#)
- Layard, E., Parker, J., Cook, T., Murray, J., Asquith, N., Fileborn, B., Mason, R., Barnes, A., Dwyer, A., & Mortimer, S. (2022). [LGBTQ+ peoples experiences and perceptions of sexual violence](#), ACON research summary report.
- Leonard, W., Mitchell, A., Patel, S., & Fox, C. (2008). [Coming forward: The underreporting of heterosexual violence and same sex partner abuse in Victoria Monograph Series Number 69.](#) The Australian Research Centre in Sex, Health & Society, La Trobe University.
- LGBTIQ Legal Service. (2020). [LGBTIQ Legal Needs Analysis: Reflections on legal need and future planning from our two-year pilot program.](#) St Kilda Legal Service; Thorne Harbour Health.
- Lippy, C. & Waters, E.M. (2021). *“I didn’t think people would take me seriously”: The Help-Seeking Strategies, Experiences, and Preferences of LGBTQ Survivors of Domestic Violence.* National LGBTQ Institute on Intimate Partner Violence.
- Malatest International. (2021). [Just Sayin’ survey: Understanding the transition needs of rainbow young people.](#) Oranga Tamariki—Ministry for Children.
- McCandless, S. (2018). LGBT Homeless Youth and Policing. *Public Integrity*, 20, 558–570.
- Ministry of Justice. (2022). [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey.](#)
- Mitchell, M., McCrory, A., Skaburskis, I., & Appleton, B. (2022). [Criminalising Gender Diversity: Trans and Gender Diverse People’s Experiences with the Victorian Criminal Legal System.](#) *International Journal for Crime, Justice and Social Democracy*, 11(2), 99-112.
- Morton, S.M.B., Walker, C.G., Gerritsen, S., Smith, A., Cha, J., Atatoa Carr, P., Chen, R., Exeter, D.J., Fa’alili-Fidow, J., Fenaughty, J., Grant, C. Kim, H., Kingi, T., Lai, H., Langridge, F., Marks, E.J., Meissel, K., Napier, C., Paine, S., Peterson, E.R., Pilai, A., Reese, E., Underwood, L., Waldie, K.E., & Wall, C. (2020). [Growing Up in New Zealand: A longitudinal study of New Zealand children and their families. Now We Are Eight.](#) Growing Up in New Zealand.
- Movement Advancement Project and Center for American Progress. (2016). [Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth.](#)
- New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2020). [Prism: Human rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics \(SOGIESC\) in Aotearoa New Zealand - A report with recommendations.](#)
- Office of the Children’s Commissioner & Ministry for Children. (2019). [What makes a good life? Children and young people’s views on wellbeing.](#)
- Open Doors Youth Service & Youth Advocacy Centre. (2018). [Affirmative Practice Guide for Working with Sistergirl & Brotherboy Young People Experiencing Homelessness in Brisbane.](#) Youth Advocacy Centre.
- Paul, J. & Ratana, M. (2022). [Youth Homelessness in Tāmaki Makaurau, Aotearoa New Zealand.](#) Ngā Wai a te Tui Māori and Indigenous Research Centre.

Sandberg, K. (2015). The Rights of LGBTI Children under the Convention on the Rights of the Child, *Nordic Journal of Human Rights*, 33(4), 337-352.

Saar, M.S., Epstein, R., Rosenthal, L. & Vafa, Y. (2015). [Sexual Abuse to Prison Pipeline: A Girl's Story](#), Georgetown University Center for Poverty and Inequality.

Smith, M. K. (2023). [Leading Gillick Astray? An Analysis of the Law of Consent Relevant to Trans and Gender Diverse Minors and the Commencement of Gender-Affirming Hormone Treatment](#). *Laws*, 12(2), 26.

Snyder, S. M., Hartinger-Saunders, R., Brezina, T., Beck, E., Wright, E. R., Forge, N., & Bride, B. E. (2016). Homeless youth, strain, and justice system involvement: An application of general strain theory. *Children and Youth Services Review*, 62, 90-96.

Sullivan-Tham, S. (2021). [Briefing Note: Access to co-education for gender-diverse students](#). Ministry of Education.

Taylor-Sands, M. M., & Dimopoulos, G. (2022) [Judicial Discomfort over 'Innovative' Treatment for Adolescents with Gender Dysphoria](#), *Medical Law Review*, 30(3), 479–508.

Thomas, D. (2019). On Childhood Studies. In K. J. Conron & B. D. M. Wilson (Eds.), [LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda](#). The Williams Institute.

United Nations Committee on the Rights of the Child. (2016). [General Comment No. 20. On the Implementation of the Rights of the Child During Adolescence CRC/C/GC/20](#). The Office of the High Commissioner for Human Rights.

Veale, J., Byrne, J., Tan, K., Guy, S., Yee, A., Nopera, T. & Bentham, R. (2019). [Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand](#). Transgender Health Research Lab, University of Waikato.

Victoria Legal Aid. (2019). [Representing children in child protection proceedings: A guide for direct instructions and best interests lawyers](#).

Victoria State Government. (2016). [Access to Justice Review \(Full report\)](#).

Victorian Pride Lobby. (2021). [Upholding our rights LGBTIQ+ attitudes towards and experiences of policing in Victoria](#).

Victorian Royal Commission into Family Violence. (2016). [Volume V: Report and Recommendations](#).

