“School was horrific, I was bullied and teased continuously for many years. It was hard for me to seek help, I felt there was no one to turn to from fear of how they will treat me! Because of my experience at school, it has had a great effect on my everyday life for many years and am still dealing with it now. Can you imagine as a 12 year old my biggest fear was letting some one know I was Gay from fear of how I will be treated and discriminated against. A big change in society is required and a good start can come from our leaders and the laws they put in place.”

- Gay male, aged in his 30s

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1. Introduction

Discrimination on the basis of sexual orientation, gender identity, intersex status, and other axes of social difference, remains pervasive in Australia. Whilst social attitudes have shifted towards greater acceptance of lesbian, gay, bisexual, trans* and intersex (LGBTI) people, albeit to differing degrees, reforms to discriminatory laws have been slower to materialise. The same can be said for protections from discrimination for LGBTI people in different States and Territories, and at a Commonwealth level.

This report presents the findings of a survey and series of workshops aimed at engaging diverse communities who identify as LGBTI, and raising awareness of existing legal protections. It recognises that at the margins, the effects of discrimination can often be more pronounced and recourse to redress significantly impeded; a realisation it has sought, in part, to address directly.

Section Two provides a review of the extant literature on discrimination experienced by LGBTI people, drawing on international and local studies, as well as unpublished reports. It highlights the different ways in which discrimination is experienced in by groups and individuals within the LGBTI community. Providing evidence from representative and more local studies, it highlights the effects that such discrimination has on the health and wellbeing for LGBTI people in Australia.

Section Three outlines the methodology we employed to conduct this research, which was a mixed methods approach, encompassing a self-report measure of exposure to discrimination, administered online, as well as intercept-style focus-groups with a diverse range of people who identify as LGBTI.

Section Four presents the findings of a survey of over 400 respondents concerning experiences of discrimination, as well as the experiences of people who attended workshops to discuss discrimination and recourse to redress. Organised thematically, it highlights the commonalities, but also the differences, in experiences of discrimination, thereby illuminating areas where change can, and must, be made.

Section Five discusses the implications of the findings of this project for LGBTI people in Australia.

Section Six presents a set of recommendations to improve protections, as well as recourse to redress for LGBTI people in Australia. These recommendations are targeted at members of the LGBTI community who have historically been marginalised and who we identified, through our survey and consultation process, warrant further efforts to improve protections and build capacity around rights and recourse to redress where they are infringed.

Finally, the appendices provide an overview of the resources developed and utilised during the workshops and in conducting the survey.
2. Literature review: Discrimination and its effects on LGBTI people

Lesbian, gay, bisexual, trans* and intersex (LGBTI) people continue to be exposed to high levels of discrimination and experience persistent disparities in health and wellbeing, understood as differences in health outcomes that are ‘unfair, unjust and avoidable’, across a range of indicators as a result (Whitehead, 1992). This testifies to the literal embodiment of social inequalities by LGBTI people, marked by uneven power relations, at a range of levels (for instance: structural, institutional and interpersonal) and through multifarious pathways (for example: inadequate or degrading healthcare, or discrimination and other forms of social trauma (Krieger, 2011).

The global burden of discrimination borne by LGBTI people has been extensively noted (San Francisco Human Rights Commission, 2012; United Nations High Commissioner for Human Rights, 2012), as has the cumulative effect of discrimination on multiple grounds, including gender, ‘race’, ethnicity, national origin, as well as sexual orientation, age, gender identity or intersex status (Kassisieh, 2012; Krieger & Sidney, 1997; Rosenstreich, 2013).

In a 2009 report on the health and wellbeing of a cohort of LGBTI young people in New Zealand, it was found that more than half (54%) of the same-sex or both sex attracted young people reported being hit or physically harmed in the past 12 months (Rossen, Lucassen, Denny, & Robinson, 2009).

In the Australian context, similar rates of discrimination on the basis of sexual orientation or gender identity have been reported. In a representative survey of 3134 same-sex attracted and gender questioning young people conducted by Hillier et al. (2010, p. 39), 61% reported experiencing verbal abuse because of homophobia and 18% physical abuse on the same basis.

A 2003 report by the NSW Attorney General’s Department found that 82% of those surveyed had experienced verbal abuse across their life-course (NSW Attorney General’s Department, 2003, p. 35). A more recent study by the Inner City Legal Centre in Sydney found that 58.4% of respondents reported experiencing ‘mean, hurtful, humiliating, offensive or disrespectful’ comments in a public space during the preceding 12 months, whilst 30.9% reported being ‘outed’ against their will in a public space or online (Inner City Legal Centre, 2012, p. 14).

A range of international, as well as local, studies have demonstrated the corrosive effects such discrimination, and harassment, can exert on the health and wellbeing of people who identify as LGBTI, ranging from access to healthcare services (McNair, Szalacha, & Hughes, 2011) and education (Hillier et al., 2010), to the prevalence of mental health disorders (Leonard et al., 2012), degrees of social connectedness (Leonard et al., 2012), the
prevalence of HIV and cardiovascular disease (CVD) (Krieger & Sidney, 1997). These effects can often be pronounced for specific vulnerable populations, including children and young people. For instance, a representative Australian study conducted by Hillier et al. (2010) documented the effects of discrimination, and physical violence, on young same-sex attracted and gender diverse young people. It found that 31% of same-sex attracted and gender questioning young people have self-harmed, and 37% have considered self-harm, whilst 16% of same-sex attracted young people have attempted suicide, and 37% have considered suicide (Hillier et al., 2010).

Just as the burden of discrimination is not borne equally across the community, so too the burden of ill health (including morbidity and mortality) linked to discrimination is not distributed equally across the LGBTI community. For example, successive national and local level studies in Australia have demonstrated the poor health outcomes experienced by bisexual people, ranging from higher levels of anxiety, depression and negative affect, to a greater number of current adverse life events (Jorm, Korten, Rodgers, Jacomb, & Christensen, 2002; Leonard et al., 2012; Pallotta-Chiarolli & Martin, 2009). The findings of a qualitative study conducted by Pallotta-Chiarolli & Martin (2009) are indicative of how such discrimination is both experienced and mediated by bisexual people at an individual level. One respondent in the study, for example, commented:

I got thrown down stairs, punched, and threatened with rape by boys for coming out as bi. They said raping me would take away the lesbian parts. I’d tried several times to complain to the principal. I reported what these guys were doing, but all he said was that since I’d done this foolish thing and come out, he could guarantee no protection, I’d brought it on myself. So when these losers saw my complaining wasn’t getting me anywhere and they weren’t getting in trouble, they got worse and worse (Pallotta-Chiarolli & Martin, 2009, p. 210).

In a recent study conducted by Leonard et al. (2012, p. 17), which explored the health and wellbeing of LGBTI Australians, the authors concluded that:

Bisexuals of both sexes are more likely than their exclusively same-sex attracted counterparts to report a psychiatric disability. 41.7 percent of bisexual women compared to 31.4 percent of lesbians reported a psychiatric disability, and 38.5 percent of bisexual men compared to 24.8 percent of gay men.

This burden of mental ill-health, including social anxiety, has been linked, in local and international studies, to specific practices not conducive to optimal health outcomes, such as ‘binge-drinking’, which have often been associated with easing the pain of social exclusion and marginalisation (Hillier et al., 2010; Pallotta-Chiarolli & Martin, 2009; Pega, Smith, Hamilton, & Summerfield, 2012; Rossen et al., 2009).
Similarly, studies conducted in Australia have demonstrated the poor health and wellbeing outcomes resulting from discrimination for trans* people. The TranZnation Report on the health and wellbeing of trans* people in Australia and New Zealand, reported that one in four respondents reported having suicidal thoughts in the two weeks immediately prior to completing the survey (Couch et al., 2007).

In a 2011 Australian Human Rights Commission (2011, p. 15) report on discrimination on the basis of sexual orientation and gender identity, which also addressed intersex status, one trans* respondent recounted multiple experiences of discrimination in an educational setting:

Throughout my time in high school I experienced constant harassment because of my gender identity. I was frequently made fun of in class, often by teachers. Students refused to use my chosen name, instead referring to me by my birth name and using female pronouns; teachers did not punish them even though it was quite clear that the harassment was deliberate ... Food was thrown at me on a number of occasions. I was pushed, spat on and hit. A group of boys in the year above me repeatedly threatened to rape me as “proof” I was a girl. There were several threats to my life. None of the people who bullied me were ever punished.

Similarly, anti-intersex prejudice and instances discrimination on the basis of intersex status were included in the Human Rights Commission (2011, p. 10) report. One respondent, for instance, commented:

While a public servant I was referred to as “the freak” by several co-workers and received ongoing harassment by one particular employee after I had mentioned that I was Intersex.

It should be noted that measuring the extent of discrimination in specific jurisdictions, and the associated magnitude of health disparities, as well as any changes over time with the passage of anti-discrimination legislation and progressive social policies, is critical to accountability, central to which is the question, “who and what drives current and changing patterns of social inequalities in health” (Krieger, 1994). However, this task is often impeded by a failure to adequately ‘count’ LGBTI populations, across minimum data sets as well as in policy-making, which poses a persistent problem (Irlam, 2012). The same situation has arisen for national minority populations, as well as indigenous peoples, in other contexts (Horner & Ameratunga, 2012; Te Rōpū Rangahau Hauora A Eru Pōmare, 2000). Paying attention to collecting data pertaining to people’s experiences of discrimination, as well as collecting denominator data through the census, is therefore a critical, and ongoing, challenge; a challenge requiring political will and adequate resourcing, including in the Australian context.
Discrimination, whether on the basis of sexual orientation, gender identity intersex status, has consistently been shown to be a key pathway through which the health and wellbeing of LGBTI people is shaped at a range of levels, including: structural (when sanctioned by law), institutional (for instances, in the provision of services), and interpersonal (in interactions between individual people), albeit differentially depending on peoples sexual orientation, gender identity, or biological sex characteristics. Addressing discrimination, and the poor health and wellbeing outcomes it is implicated in, therefore requires sustained action across a range of sectors, encompassing capacity building, awareness raising and legislative reform.
3. Methodology

In order to address the key aims of this project, which were to ascertain the experiences of discrimination of a diverse group of LGBTI people and educate people about the legislative remedies available to them, we employed a mixed-methods approach, encompassing a self-report measure of exposure to discrimination, administered online, as well as focus groups with a diverse range of people who identify as LGBTI. The aim of these focus groups was two-fold. The first was to explore participant’s experiences of discrimination in a range of everyday settings. The second was to identify, and share, avenues for redress, under current legal frameworks, for LGBTI people who experience discrimination, so that they can be informed about their rights and empowered to act in situations where they experience discrimination.

Workshops

Workshops, in the form of small focus group sessions, were advertised through local media, online via the NSW Gay and Lesbian Rights Lobby website, via social media and through email lists. Participants responded to these advertisements, usually through prior registration.

The focus groups, each focusing on different issues (for instance, ageing, migrant and culturally and linguistically diverse and same-sex attracted women), were held in the following locations and each attended by between 5 and 20 participants.

- Blue Mountains (Aged)
- Newtown (Same-sex attracted women)
- Surry Hills (Migrant and Culturally and Linguistically Diverse)
- Parramatta (Young people)
- Newtown (Young people)
- Darlington (University students)
- Redfern (Disability)
- Surry Hills (Trans* and intersex)
- Newtown Neighbourhood centre (General)
- Darlinghurst (General)

The workshops targeted at women and migrant and culturally and linguistically diverse communities (CALD), as well as young people, attracted the highest participation rates. Each workshop was facilitated by at least one of the GLRL committee or anti-discrimination working group members. A facilitation guide was developed to structure and inform the discussion during the workshop. This encompassed information on rights, recourse to redress, and was also designed to elicit people’s feedback on the nature of these protections and their individual experiences of discrimination (see Appendices).
The workshops relied on incidental transcription of proceedings when areas of interest, and commonality, were identified within a discussion. Generic, as well as more specific, information resources (for example see appendix 1) were developed for each workshop, focusing on existing legal protections available in the State of New South Wales. This information was correct and current at the time the workshops were held. In the case of workshops held following the passage of recent amendments to the Sex Discrimination Act (1984), fact-sheets developed by the Australian Human Rights Commission to raise awareness about the new protections and the complaints process were distributed to participants.

Survey

The NSW Gay and Lesbian Rights Lobby developed the survey component of this project, in collaboration with the Victorian Gay and Lesbian Rights Lobby, with the survey administered online by global LGBTI advocacy organisation, ALL OUT.

Survey participants self-selected to participate, based on an email they received from ALL OUT. The survey employed a largely non-validated measure, and focused on self-reported experiences of discrimination across a range of domains, encompassing when experiences of discrimination took place, how regularly and what, if any, response was taken by respondents as a result. The survey form elicited 415 responses from across Australia, including 148 responses from NSW.

The key demographic characteristics of survey respondents were as follows:

- The geographic spread of respondents was uneven, but perhaps reflected the population size in different metropolitan centres, with 148 respondents from NSW, 110 from Victoria and 29 from Western Australia (WA) (see figure 1);
- The median age of respondents was 33 years of age;
- The largest number of respondents was in the 20-29 age group, followed by the 30-39 age group (see figure 2); and;
- Respondents reported a range of ethnic identities, as well as countries of birth (although care should be taken in interpreting this self-report measure as it conflated ethnicity and country of birth).
Figure 1: Geographic spread of respondents

Figure 2: Age profile of survey respondents
4. Findings: Experiences of discrimination and recourse to redress

The findings of our workshops and survey indicate that discrimination was experienced by the respondents in various settings, including: education, employment and the workplace, healthcare and in public spaces (see figure 3). Each of these areas of public life is elaborated in this section.

*Figure 3: Settings where discrimination is experienced*
Education

School was horrific, I was bullied and teased continuously for many years. It was hard for me to seek help. I felt there was no one to turn to from fear of how they will treat me! Because of my experience at school, it has had a great effect on my everyday life for many years and am still dealing with it now. Can you imagine as a 12 year old my biggest fear was letting some one know I was Gay from fear of how I will be treated and discriminated against. A big change in society is required and a good start can come from our leaders and the laws they put in place.

Many survey respondents, as well as workshop participants, reported having experienced discrimination in educational settings, from primary school through to the tertiary level (for example, university or TAFE). This ranged from often persistent bullying, marked by name-calling and exclusion from group activities, to acts of physical violence, including one instance where a cigarette was extinguished on a person:

After confiding in someone that I was gay, I quickly became the school's biggest target. The school I went to was composed mostly of students with strong religious backgrounds, in particular Islamic and Christian. I was picked on during class, was punched, and even burned with cigarettes on one occasion. At least one teacher saw, but a blind eye was turned. (19 year-old gay male)

A number of respondents also reported a pervasive fear of being ‘outed’ (identified publicly as lesbian, gay, bisexual, trans* or indeed intersex against one’s will), by other people in the school environment, or coming out eventually, and concerns about how they would be treated after such an event. One respondent, an indigenous bisexual male in his late teens, commented:

...[T]he whole coming out process is a massive stress and certain people just don’t accept you.

Other respondents reported similar experiences. For example, a gay male in his 20s shared his experience of coming out at school and the harassment that followed:

Kids at school when I came out harassed me for some time about my sexuality on the odd occasion the teachers would also put their two cents in. I was at a private boys school. I also had problems when the Navy cadets found out, from bullying and harassment through to exclusion from some group activities.

Another bisexual male, reflecting on the specific nature of the discrimination and bullying he was subjected to, remarked:

I was harassed at high school for being bisexual, I felt ashamed of my sexual orientation so much I wanted to repress[…] it. Being out that environment at age 21 I am not really bothered by anyone’s misleading prejudices (sic) anymore.
This is consistent with literature demonstrating that the period immediately prior to, and immediately following, an individual ‘coming out’ is the period where young people in particular are most at risk of being ostracised by family of friends, and experiencing poor mental health and wellbeing as a result (Hillier et al., 2010).

These concerns around discrimination, and fears of being outed, were not limited to students, however. One high school teacher recounted his experience(s) in becoming accredited, explaining that due to the existence of religious exemptions in State anti-discrimination law, and a general culture of institutionalised homophobia at a religious school, he had struggled to negotiate his role as a student teacher:

*I’m a high school teacher. When I was a student teacher I had my first prac in a Senior Catholic College in [NSW location]. One of the staff members I was working with directly asked me if I was gay and made it very known to me if I was gay I wouldn’t be welcome in the school. I also found out a student had come out in the school and had consequently been expelled for it. For the month I worked there my mental health was in a terrible place. Thoughts of suicide / giving up my chosen career were all I could think about each night I went back to my holiday unit. At that stage I hadn’t yet come out or accepted my sexuality and it was a very dark point in my life. Nothing was ever done about the Teacher / School from the University point of view because I never told the University about it because that would of required me to reveal my sexuality and the teacher involved was involved in my prac assessment. If the experience occurred now I’d be more than happy to report it to the appropriate people. No one should have to go through the experience I went through. Particularly a prac student who is dependent on the school / staff to pass the course (unequal power relationship).*

Indeed, some participants argued that schools, at an institutional level, either actively condoned, or tacitly approved of, such discriminatory conduct. A lesbian woman in her 20’s, for example, remarked:

*Attending a Catholic high school was very difficult because we were constantly reminded that public displays of affection between same-sex couples would not be tolerated and would result in punishment. We were constantly belittled and discriminated against by fellow students, as well as teachers who had a zero tolerance level for anything aside from heterosexual displays of relationships.*

These experiences highlight not only the widespread nature of bullying and discrimination on the basis of sexual orientation, gender identity or intersex status in educational contexts, spanning primary school right through to university, but also the manner in which acts of commission and omission in institutional environments exacerbate, and to some extent legitimate, discriminatory conduct.

Addressing this burden of discrimination in educational contexts accordingly requires explicit policies against bullying on the basis of sexual orientation, gender identity or
intersex status, rather than generic policies that fail to engage with the specific experiences of LGBTI people, including the need for support, and not further victimisation, following experiences of discrimination, bullying, and, in some cases, physical violence. It also requires embedding accountability into legal and policy frameworks, to ensure that, at an institutional level, excuses for discriminatory conduct are provided neither by the law, nor by institutional policies and practices. Our findings indicate that this is clearly not the case.
Survey respondents and workshop participants alike spoke about concerns in accessing primary and tertiary healthcare. In the context of access to healthcare services, such as primary healthcare, these barriers appeared to arise as a result of prejudice and, in many cases, what could be described as discriminatory conduct. A gay male survey respondent in his 30s, reported his experience in trying to access primary healthcare services:

Some doctors just aren't prepared to deal with GLBTI patients in a professional manner, I have found many GP's presume things based on my homosexuality which were false.

For some participants, their encounters in the healthcare system appeared to constitute instances of direct discrimination. The consequences of these experiences are profound, exerting an influence over how they come to see, and indeed access, healthcare services later in life. One respondent, a lesbian woman aged in her 40s, related her experience when undergoing an operation at a major Sydney hospital in the 1990s, and the effects it has engendered in terms of her access to healthcare:

I was recovering from an operation and my partner came to visit me in the visiting hours. At the end of the visiting hours we noticed that the other patients' partners (obviously heterosexual) stayed on, so my partner also stayed with me. Shortly afterwards we were told by a nurse that the visiting hours had ended and 'my friend' needed to leave. I advised the nurse that 'my friend' was in fact my partner and we thought it was okay because the others' partners were still there. She said something along the lines of, "Well, that's different of course" and again asked my partner to leave. As I was recovering and we didn't want to create a scene, my partner did leave. However, it has left a very negative feeling in me towards the medical profession. I still regularly have to attend hospitals and have tests, and I never take my partner with me because I don't wish myself or my partner to go through the same discrimination.

The pervasiveness of assumptions, and common stereotypes, on the basis of a person's sexual orientation, gender identity or intersex status, was similarly reported by other participants, and particularly self-identified queer, lesbian or bisexual participants. A queer woman in her 30s remarked:

Doctors always assume [I'm] hetero and have had a few in the past that openly register discomfort when they are told I am in a lesbian relationship. But never been refused medical services because of it. I usually just go to a diff doctor next time.
A gay male, now in his 30s, recounted an experience seeking medical care for symptoms that were ultimately found to be pneumonia:

_I went to hospital. I was told (without a proper examination) that sometimes guys like me over do it on drugs and I should go and sleep it off. I had pneumonia._

Similarly, when people proactively sought medical advice or assistance in relation to specific health concerns, they reported encountering prejudice and discrimination, marked by a distinct change in staff attitudes towards them:

_I was made to feel very uncomfortable when I was at the doctor’s office and wanted to have health checks for sexually transmitted diseases. Everything was fine until I mentioned that I was gay. Once I mentioned I was gay the doctor’s attitude totally changed._ (Gay male, 30s)

A survey respondent, a lesbian woman aged in her 30s, commented:

_When I was 20 years old and going for a pap smear at a surgery in Chatswood, NSW. The female doctor asked if I used birth control, I said no. She then asked if I use condoms during sex, again I said no. To that she started to berate me for not having safe sex, when I replied that I was in a monogamous relationship with my partner who is a woman. Her eyes widened and her jaw dropped and then she said “I have to go speak to my supervisor”. I heard her speaking to a male doctor outside the door. When she came back in she said in a strong voice that in addition to the pap smear she was going to have to test me for gonorrhea (sic), warts, HIV and a number of other tests that I can’t remember. I left the surgery feeling very uncomfortable and vulnerable. I wasn’t very comfortable within myself at that age and didn’t know how else to respond other than just shut up and silently accept what she was saying. Thankfully not long after that experience I found a female doctor in Darlinghurst, NSW, who was incredibly professional, knowledgeable and accepting of all sexualities. More doctors like her please!_

Another respondent reported, again in seeking to undergo a pap smear at a local medical facility:

_Ignorant nurse had trouble getting speculum in. Said “That’s the problem with you lesbians, you’re just not penetrated enough”._

For LGBTI people who were entering their twilight years, fears over the way they would be treated, now partially addressed through the recent passage of amendments to the _Sex Discrimination Act_ (1984), were at the forefront of their minds:

_I am actually worried about old age as we are there just about! I am 65 next year and [my partner] will be 70, we have been together 44 years. I worry about the religious angle and general discrimination or non-inclusion. What if we both need_
to go into a nursing home? Will we stay together? Things like that. I am hoping we both die before anything like this happens, and would make sure I don’t get that far. 50 Valium and a bottle of vodka will be on the agenda for me . . . I am saving the Valium now just in case.

Access to healthcare was an area where trans* and intersex people reported significant issues, including discrimination. During the workshop for trans* and intersex people, one participant commented that a ‘gate-keeper’ mentality still existed for trans* people, whereby institutional policies, as well as individual medical professional attitudes, rather than being affirming of a person’s identity, instead involved ongoing referral and second-guessing. A trans* man aged in his 60s, for instance, recounted an experience seeking access to testosterone, asserting:

[The d]octor commented on my need for testosterone - was it for a beard? Was not going to give me a new script initially.

Whilst the release of new Commonwealth guidelines concerning sex and gender identity recognition was welcomed, participants noted that attitudinal change requires sustained effort. It was noted that whilst the guidelines appear to encourage self-affirmation of a person’s identity, rather than requiring medical procedures prior to presentation, it was still premised on medical, rather than a social, model of health and identity, which may not completely address the issues raised concerning institutionalised, and sometimes indirect, forms of discrimination.

Much of these experiences are arguably linked to the pervasive heterosexism in health and healthcare, which operates on the assumption that being heterosexual (and indeed born with certain anatomical characteristics defined in relation to a gender binary) is a universal truth and ‘norm’ around which society, and the healthcare system itself, ought to be designed (Fish, 2006). This culture perpetuates notions that a child cannot have two mothers, something the law indeed recognises to varying degrees, or that people cannot be in a same-sex relationship. Whilst heterosexism does not always lead to acts of what would legally be classed as discrimination, it certainly fosters the institutional conditions that enable homophobia, bi-phobia, trans*phobia, and indeed anti-intersex prejudice, to exist.
Employment or workplace discrimination

A considerable number of survey respondents, as well as workshop participants, reported experiencing discrimination in employment or the workplace. 18.5% of survey respondents, for example, reported experiencing such discrimination. These experiences ranged from more subtle forms of social exclusion in the workplace, to deliberate exclusion from workplace meetings, where other staff at a comparable were invited, as well as verbal abuse and, in some cases, dismissal.

One participant, during a workshop held in Newtown, Sydney, recounted an experience adding her female partners name to superannuation details and the workplace human resources division responding incredulously to the idea of a same-sex relationship and actively resisting this, in spite of the fact that she was legally entitled to do so. The woman in question persisted and was ultimately successful in amending her details to include her partner’s name.

Some instances of discrimination were far from subtle, involving differing degrees of sexism and homophobia, targeted particularly at lesbian, bisexual or queer women. One workshop participant, a public servant, recounted instances of being referred to as a ‘lesbian bitch’ and excluded from workplace meetings by a direct supervisor. Other workshop participants at the same-sex attracted women’s workshop recounted similar experiences where homophobia and sexism were experienced simultaneously in the workplace environment.

A survey respondent, a gay male aged in his 40s, shared an experience of discrimination he perceived to be based on sexual orientation, as well as other factors:

...the most recent discrimination that I have experienced came from my supervisor at work: a woman who had some serious issues dealing with a gay man also because of the fact that I was dating a black man. Although, as the lawyer told me, it would have been difficult to prove, I have reasons to believe that my supervisor’s bullying and harassment was also due to my sexual orientation and preferences. The bullying was so serious that I saw no other way out but resigning, even thought I don't have another job.

Significant issues arose for some trans* people, particularly following transition. As a case in point, one survey respondent recounted a number of experiences where past loyalty to the organisation and ongoing promotion had been discounted, following full transition, ultimately leading to dismissal:

I transitioned on the job, I had been working there for 10 years, been give promotions and been considered an asset to the organisation, as soon as I explained what I was going through and that I would be transitioning on the job my performance was scrutinised and I went from having no formal warnings to a
3rd warning, within a year they created a case on lies and insignificant things and fired me. (Trans* man, 30s)

A trans* women, in her 40s, similarly shared experiences trying to secure employment:

One worker at an employment service said other workers had told him not to bother because I would never get a job.

The existence of religious exemptions in anti-discrimination law was also identified as problematic. Whilst such exemptions were seemingly only intended to operate in the context of employment, they in fact impacted on every facet of a person’s daily life. One survey respondent, a gay male ages in his 30s, commented:

I work as a musician and I've also noted that religious organisations have hired me due to my skills but have placed caveats and rules on my behaviour and appearance outside of church the day of a performance. I fully understand that they don't want me being "odd" in the service, but I should be allowed to kiss my partner goodbye in the carpark without thinking it'll get me fired!

This latter case demonstrates the manner in which religious exemptions, which operate in service provision and employment for example, are not limited to those areas at all, but impact on other areas of peoples’ everyday lives. For example, they shape if, when and, to some extent, how, people employed, or using the services of, a religiously affiliated organisations can act and show affection towards other people, including a partner, as well as what activities they can engage in in public spaces (for instance, marching in Mardi Gras, volunteering at a specific stall at a community event, or simply having breakfast with someone).

For some, there was a sense of helplessness that arose from constant direct exposure to discrimination, as well as vicarious exposure through the experience(s) of friends and relatives. This was encapsulated in the comments of one survey respondent, a lesbian woman in her late teens, who asserted:

As gays we have no say. I had to suck it up. In the workplace I was discriminated against and was sexually harassed by one guy who has had 3 sexual harassment warnings and numerous other ones. But nothing was done with him and I had to quit my job due to his torment.
Public spaces

I have an encyclopaedia of discrimination living in Sydney. I've lived in Sydney for more than 16 years. Just when I think I can let my guard down, there's always someone who just doesn't get it. I've been discriminated from Police, retail shops, gov offices, recruitment, a doctors surgery or when finding work. There has been too many times that I've been looked down, spoken down to there's just too many to count. (Gay male, age not provided)

Whilst social attitudes towards gay and lesbian, and to a lesser extent bisexual, trans* and intersex, people in Australia have shifted significantly over recent years, verbal and physical abuse in public spaces on the basis of sexual orientation, gender identity or intersex status, remains a salient concern for LGBTI people.

29.6% of respondents to our survey reported being abused in public spaces. A gay male, who did not give his age, commented:

“My neighbour...I threaten me on a daily basis cause I’m gay. When I contact police for help they don’t do anything except they told me to suck it up. I live in fear every day.”

For people who came from migrant and culturally and linguistically diverse (CALD) backgrounds, these experiences were not necessarily only on the basis of their sexual orientation, gender identity or intersex status, but also on the basis of their outward physical appearance, or other attributes, such as their accent(s).

Many people from migrant and CALD backgrounds also reported experiencing a ‘double burden’ of discrimination within the LGBTI community and the broader community, largely concerning ‘race’, ethnicity or national origin. This effectively means that the discrimination people from migrant and CALD backgrounds face is compounded by other forms of discrimination that can foster social marginalisation, particularly for young people who are kicked out of their homes after ‘coming out’, but who similarly find no ‘home’ in the LGBTI community. Whilst our workshop participants largely reported having some degree of support from their families following the experience of coming out, experiences of racism, and other forms of discrimination associated with being visibly distinguishable, or a migrant, were shared by all of the participants, without exception.

These experiences of verbal, and sometimes physical, abuse in public spaces are consistent with the findings of earlier studies conducted in New South Wales (Inner City Legal Centre, 2012; NSW Attorney General’s Department, 2003) and nationally (Hillier et al., 2010), suggesting that LGBTI people experience disproportionate levels of discrimination and violence based on their sexual orientation, gender identity or intersex status. However, the findings of our project also indicate that exploring the cumulative effect of discrimination on multiple grounds (including ‘race’, ethnicity, national origin or immigrant status) is critical,
consistent with the international literature (Horner & Ameratunga, 2012; Krieger & Sidney, 1997). This requires deepening and widening the understanding of members of diverse communities, concerning not only what constitutes discrimination, but also what form of discrimination this represents, so that people feel empowered and able to pursue action under the Race Discrimination Act (1975) or the Sex Discrimination Act (1984), as well as relevant State and Territory laws.
**Recourse to redress: Taking action as a result of experiences of discrimination**

Having recourse to redress, through anti-discrimination protections, is recognised as a key pathway for the exercise of ‘agency and resistance’ in the face of pervasive, and often persistent, discrimination experienced by members of the community, including LGBTI people (Krieger 2011).

Although protections from discrimination on the basis of ‘homosexuality’ and ‘transgender identity’ have existed in State (NSW) law for decades, and protections from adverse action on the basis of ‘sexual preference’ in federal employment law have existed since 2009, there is still a general lack of awareness around these protections and how to put them into practice.

Whilst all of the workshop participants, to varying degrees, were aware of at least some of the protections available, our survey found that, in terms of taking action following an experience of discrimination, many people reported feeling powerless to do so. In response to the question: “Did you pursue a complaint or take action?” only 23.2% answered ‘Yes’, a significantly lower proportion than the 47% who reported experiencing discrimination by a service or institution.

More specifically, whilst 25.6% of lesbian respondents, 23.5% of gay respondents, and 22.2% of trans* respondents, reported taking action following an experience of discrimination across these domains, only 13.3% of bisexual respondents reported taking action following an experience of discrimination (see figure 4).

*Figure 4: Respondents experience of discrimination and taking action*
For example, a 42 year-old bisexual female commented, “You just get ignored”, whilst a 16 year-old indigenous bisexual male commented:

“I didn’t because it was never directed directly at me but it still affected me greatly especially with my self worth and self esteem.”

Sometimes frustration was expressed about institutional rules, policies and procedures, as in the base of a 19 year-old bisexual who felt that an experience of discrimination was exacerbated by the fact that the institutional environment seemed to tacitly support discriminatory conduct:

*Because there wasn’t anything I could do to change their rules.*

For some respondents, and workshop participants, a sense of hopelessness pervaded their response, characterised by the following comment:

*I was very distraught, poor and it seemed hopeless. (20 year old bisexual female).*

What this data indicates is that whilst protections do exist, although only recently for bisexual people in NSW and intersex people across all Australian jurisdictions, people who experience discrimination require additional support to feel safe and supported in coming forward to assert their rights to equality and non-discrimination. For specific groups, including trans*, intersex and bisexual people, this unwillingness to come forward could reasonably be attributed to fears of ‘outing’, as well as the historic unavailability of protections, as well as protections that resonate with life experience(s), in States such as NSW. It should be noted, however, that intersex and bisexual public servants in NSW are still not afforded protection under State-based anti-discrimination law. In relation to bisexual people, the extant international literature has framed this as ‘bisexual erasure’, denoting the active exclusion of bisexual people from history, the law, and society as a result *(San Francisco Human Rights Commission, 2012).* The juridical effects of bisexual erasure are pervasive, and carry specific legal consequences for people who identify, or can be described as, bisexual *(Colker, 1993).*

It should also be noted that whilst lesbian woman reported the highest rate of ‘taking action’ following an instance of discrimination, this may well mask the difference in response(s) to the severity of different instances of discrimination, some of the most serious of which may indeed go unchallenged. The most egregious acts of discrimination directed at lesbian women, identified both through our survey and in our workshops including what appeared to be combinations of sexism and homophobia, manifest through direct verbal abuse and workplace exclusion, for example, were followed by no direct action. Caution therefore needs to be exercised in interpreting, and extrapolating, the results of the survey pertaining to those who reported ‘taking action’ following an incidence of discrimination.
5. Discussion

Discrimination on the basis of sexual orientation, gender identity and intersex status remains pervasive in Australia. Successive national and local level studies have documented the burden of morbidity and mortality associated with this discrimination, which exerts a significant toll on the health and wellbeing of LGBTI people in Australia (Hillier et al., 2010; Leonard et al., 2012; Pallotta-Chiarolli & Martin, 2009). For people who identify as members of national minorities, including migrants, refugees, or from culturally and linguistically diverse backgrounds, as well as Aboriginal and Torres Strait Islander peoples, this discrimination can occur on multiple grounds simultaneously, and accumulates across the life course to produce specific health and wellbeing outcomes, including in terms of social connectedness.

The discrimination experienced by diverse LGBTI people that we inquired into took place across a range of domains of everyday life, from the home environment, to educational institutions, to healthcare and in other public spaces. It ranged from instances of exclusion, and bullying, often marked by name-calling and threats to instances of physical violence. Whilst successive national studies have focused on young peoples experiences of such discrimination, our workshops and survey have documented discrimination at different points across the life course, including as people age. This demonstrates that discrimination is not only pervasive but also persistent, insofar as across an individual’s life course they tend to experience more than one instance of discrimination.

The majority of survey respondents, and workshop participants, reported taking no action in instances where they felt they were discriminated against. Some attributed this to a fear over repercussions, particularly in terms of their employment, whilst others attributed this to a general sense of hopelessness, whereby they felt that making a stand publicly at a particular point in time may not necessarily result in a change to the status quo. This underlines the importance of ensuring that information pertaining to anti-discrimination protections is readily available, accessible (including in different languages and formats, in the case of people who are visually impaired), and well disseminated. It also signals the need for a focus on changing institutional practices and policies, to ensure they are consistent with existing anti-discrimination legislation, which is clearly not always the case. A persistent barrier to individuals taking action appears to be the fact that complaints processes still require significant information to be provided by complainants, and place the burden on those who have already experienced discrimination and, in some cases, subsequent victimisation as a result of that discrimination. This draws attention to the need to shift the burden of proof in anti-discrimination law, to improve access to justice for those who experience discrimination directly. This approach is consistent with the recommendations of the United Nations Committee on the Elimination of Racial Discrimination, and already operates in other jurisdictions, such as New Zealand, particularly
where the provision of goods and services on the part of government agencies are involved. This acts as a corrective to the clear power imbalance that exists in such situations.

Critically, the findings of this report also highlight the importance that bystander intervention can make in instances of discrimination. Here, it is pertinent to note that none of the experiences of discrimination that participants recounted, either through the survey or in workshops, were accompanied by a bystander intervening to assist or prevent further verbal abuse or discriminatory conduct. In only one notable instance, where a student’s parents threatened legal action against a school after the event, did a participant report the positive intervention of a third-party. This is problematic socially, but it also increases the burden on specific members of the LGBTI population, including young people, people from migrant and culturally and linguistically diverse backgrounds, as well as bisexual, trans* and intersex people, who may not have expansive support networks in their workplace, educational context or broader community, and who may experience further marginalisation and victimisation as a result of their initial experience(s) of discrimination.

These findings raise a number of implications for those working with LGBTI people, particularly service providers, employers and government agencies. Foremost amongst these is that addressing acts or omissions that would prima facie appear to constitute discriminatory conduct under existing State and Federal law(s), particularly in the workplace, school environment and in healthcare, should be an immediate priority. The second is that inherently discriminatory notions of what constitutes ‘the norm’, but perpetuate indirect discrimination, should be challenged. These ideas are instrumental in perpetuating notions of superiority that are often used as excuses or justifications for discrimination against LGBTI people, as well as refusals to act in the face of discriminatory conduct.

Whilst this report has painted a picture of pervasive discrimination, and sometimes physical violence, experienced by LGBTI people, it is equally a testament to the resilience of LGBTI people in Australia today; A heterogeneous group of people who not long ago shared the collective experience of being criminalised simply for being who we are and many of whom enjoyed no legal protection(s) from discrimination until recently. As long as statutes exist that legitimate such conduct, and many people who practice discrimination fail to be held to the standards that both State and Federal Parliament(s) have established, eradicating the burden of discrimination faced by LGBTI people, and the poor health and wellbeing outcomes such discrimination is associated with, will remain a dream deferred.
6. Recommendations

1. Legislative reform

1.1. Remove religious exemptions from all State and Territory, as well as Commonwealth, anti-discrimination law(s), including, for instance, in the areas of service delivery and employment.
1.2. Recognise that discrimination can be experienced on multiple grounds, or attributes, simultaneously, and provide legislative provisions for complaints on such a basis.
1.3. Shift the burden of proof in anti-discrimination law¹, to improve access to justice for those who experience discrimination directly.

2. Awareness-raising around complaints processes

2.1. More closely integrate content about gender-based discrimination, including workplace sexual harassment, and discrimination on the basis of sexual orientation in particular, in training about discrimination targeted at institutions.
2.2. Make complaints processes more accessible and legislative protections more widely known amongst specific sub-population groups, including young people, people from migrant and CALD backgrounds, as well as bisexual, trans* and intersex people. This could include, for example: integrating case studies or vignettes of how bi-phobia, trans*phobia and anti-intersex prejudice functions in information sheets on anti-discrimination protections, or in resources developed across the public service, both for people employed in the public service and service users, for instance.

3. Social inclusion initiatives

3.1. Fund social inclusion initiatives within schools and other educational institutions, as well as healthcare services, that address homophobia, bi-phobia, trans*phobia and anti-intersex prejudice.
3.2. Promote awareness of the newly included ground, or attribute, of ‘intersex status’ in institutional campaigns against discrimination. This should focus heavily on service provision and employment, given the nature of the changes and the fact that religious exemptions do not apply in the same way to this protected attribute as they do in relation to other attributes.

¹ This is consistent with the ‘access to justice’ requirements of the Committee on the Elimination of Racial Discrimination’s General Recommendation no. 30, concerning discrimination against non-citizens (CERD/C/64/Misc.11/rev.3). It also already operates in other jurisdictions, including New Zealand.
Appendices

Appendix 1: Survey data

Figure A: Sexual orientation of survey respondents

Figure B: Gender identity or intersex status of survey respondents
Figure C: Average frequency of discrimination experienced, by setting

Figure D: Proportion of respondents who have experienced discrimination, by setting
Appendix 2: Survey form

1. Which of the following best describes your sexual orientation:
   - Gay
   - Lesbian
   - Bisexual
   - Queer
   - Other

Other (please specify):

2. Which of the following describes your gender identity or biological sex characteristics?
   - Female
   - Male
   - Transgender (FTM)
   - Transgender (MTF)
   - Intersex
   - Queer

Other (please specify): ________________________________

3. What is your age? ______________

4. What is your postcode? ____________________________

5. What is your cultural/ethnic heritage or country of birth? ____________________________

6. How often have you experienced discrimination in any of the following areas on the basis of your sexual orientation, gender identity, biological sex characteristics or intersex status? Please tick the relevant box:
7. For any of the areas you identified above, could you tell us about one, or a couple, of times when you faced discrimination (i.e. verbal or physical abuse and unfair treatment)? We are particularly interested in hearing any stories of discrimination at schools, when going to the doctor, at hospital or when receiving services from any government funded health or welfare agency, including religious organisations.

8. In relation to the story you've just told us, which of the following areas of public life does it relate to? (tick all that apply):
   - Workplace / Employment
   - Schools/Education
   - Health Services (including hospitals, doctors etc)
   - Welfare Services (including homelessness, mental health, youth services)
   - Aged Care Services
   - Police
   - Other Government Services
   - In my home / a friend’s home
   - In public / on the street

9. In relation to the experience(s) of discrimination you described above, did you pursue the matter or seek legal advice?
   - Yes
   - No
Appendix 2: Fact sheet

Fact Sheet

30 June 2012

Sexuality Discrimination

What is discrimination?

- Sexuality discrimination is when a person treats you less favourably because of your sexuality or your suspected sexuality.

- Sexuality discrimination may also be experienced in conjunction with other grounds, such as sex, race, age or disability (including HIV/AIDS status).

What is harassment?

- Harassment includes behaviour that is unwanted, and offends, intimidates or humiliates a person. For example, a boss calling a gay employee a ‘poofter’ may be considered harassment under the law.

- In NSW, the Anti-Discrimination Act 1977 makes it unlawful to harass or discriminate against a person on the basis of their homosexuality, disability (including HIV/AIDS status), race, age, marital status, sex (including pregnancy), transgender status or carer’s responsibilities.

- It is against the law to harass or discriminate against a person in most types of employment, including when a person applies for a job, at any time during employment, or when leaving a job.

What is vilification?

- The NSW Anti-Discrimination Act 1977 also makes it unlawful to do anything publicly that could encourage severe ridicule, serious contempt or hatred, of a person on the basis of their homosexuality, race, transgender status or HIV status.

- Examples of vilification could include statements in the media that vilify lesbians
and gay men.

What can I do if I experience discrimination, harassment or vilification?

- Complaints of discrimination relating to employment can be made to the NSW Anti-Discrimination Board.

- Some employees are not covered by NSW anti-discrimination laws and so have limited protection against discrimination on the grounds of sexuality. NSW anti-discrimination laws give wide-ranging exemptions to religious institutions and private educational institutions. For example, a teacher or student who is discriminated against by a private or religious school on the basis of their sexual orientation will not be protected under NSW anti-discrimination law.

- There is also no federal anti-discrimination law to protect lesbians and gay men from discrimination on the grounds of sexuality. However, the *Fair Work Act 2009* protects employee’s covered by the national system from discrimination on the basis of ‘sexual preference’ in relation to all aspects of employment, from hiring, to promotion and training opportunities.

Where can I get help?

**NSW Anti-Discrimination Board**


**Email:** complaintsadb@agd.nsw.gov.au

**Post:** PO Box A2122, Sydney South NSW 1235

**Fax:** (02) 9268 5500

**Australian Human Rights Commission**


**Email:** complaintsinfo@humanrights.gov.au

**Phone:** 1300 656 419 (local call) or (02) 9284 9888

**Fax:** (02) 9284 9611

**Inner City Legal Centre**

**Website:** [http://www.iclc.org.au/](http://www.iclc.org.au/)

**Email:** iclc@iclc.org.au

**Phone:** (02) 9332 1966

**Fax:** (02) 9360 5941
### Facilitator Guide

#### 3. Training Plan

<table>
<thead>
<tr>
<th>Session Content and Learning Outcomes</th>
<th>Session Summary</th>
<th>Training Resources</th>
<th>Duration</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Introduction</strong></td>
<td></td>
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<tr>
<td>Participants will:</td>
<td></td>
<td></td>
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<tr>
<td>• Introduce themselves to the group, and share what they hope to get from the workshop</td>
<td>1.1 Welcome; acknowledge traditional owners; housekeeping</td>
<td>• Powerpoint slides</td>
<td>10 minutes</td>
<td></td>
</tr>
<tr>
<td>• Discuss the content and process of the workshop</td>
<td>1.2 Participant introductions</td>
<td>• Flipchart paper, markers and blu-tak</td>
<td></td>
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<tr>
<td>• Develop a group agreement</td>
<td>1.3 Group agreement</td>
<td>• Handouts – powerpoint</td>
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<tr>
<td><strong>2. Discrimination</strong></td>
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<td></td>
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<tr>
<td>Participants will:</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>• Gain an understanding of what discrimination is</td>
<td>2.1 What is discrimination?</td>
<td>• Powerpoint slides</td>
<td>15 minutes</td>
<td></td>
</tr>
<tr>
<td>• Explore the kinds of discrimination experienced by LGBTI people</td>
<td>2.2 Discrimination on the basis of sex, sexuality and gender identity</td>
<td>• Flipchart paper, markers and blu-tak</td>
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<tr>
<td>• Explore the kinds of discrimination experienced by people with a disability; young people; older people; and on religious grounds</td>
<td>2.3 Discrimination on the basis of Disability / Youth / Ageing / Religion</td>
<td>• Handouts – case study</td>
<td></td>
<td>`- GLRL Fact Sheet</td>
</tr>
<tr>
<td>• Identify the kinds of discrimination taking place in a case study</td>
<td>2.4 Case Study Activity: Facts of the case; what kind of discrimination is taking place?</td>
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<tr>
<td>Session Content and Learning Outcomes</td>
<td>Session Summary</td>
<td>Training Resources</td>
<td>Duration</td>
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</tbody>
</table>
| 3. Human Rights and Anti-Discrimination | Participants will:  
- Gain an understanding of Human Rights  
- Learn about International Human Rights instruments and Anti-Discrimination law in Australia  
- Identify HR instruments and A-D laws that apply to case study | 3.1 What are Human Rights?  
3.2 International HR instruments & Australia’s treaty obligations  
3.3 Australia’s A-D legislation: Commonwealth and State  
3.4 Case Study Activity: which of the above relate? | - Powerpoint slides  
- Flipchart paper, markers and blu-tak  
- Handouts – case study & powerpoint | 15 minutes | |
| 4. Taking Action | Participants will:  
- Learn how HR instruments and A-D laws were used to combat discrimination in the case study  
- Learn how to engage these tools themselves | 4.1 Case Study Activity: which HR instruments and Australian A-D laws were used, and how?  
4.2 If you had a complaint, what would you do | - Powerpoint slides  
- Flipchart paper, markers and blu-tak  
- Handouts – case study & powerpoint  
- AHRC & state govt. A-D commissions brochures | 20 minutes | |
| 5. Conclusion | Participants will:  
- Share what they have learned  
- Complete an evaluation form  
- Be given the opportunity to participate in LGBTI HR and A-D activism | 5.1 Participants share what they’ve got out of the workshop  
5.2 complete evaluation form  
5.3 be given membership form for GLRL | GLRL brochures | 10 minutes |
Appendix 4: Acquittal Statement

Funds for the project ($20,000 excluding GST) have been spent as follows:

Staff Wages
A total of $12,390 was allocated to the 413 hours of work completed by the Policy Officer role (completed by two staff over the funding period). Work that was conducted during this time includes:

- Education, consultation, development, implementation and delivery of workshops
- Authoring of surveys and information factsheets (included in Appendixes 1 and 2)
- Preparation and delivery of all reports and presentations delivered in correlation to delivery and evaluation of workshops
- Management of stakeholders and volunteers (including the Committee of Management), including in relation to workshops and survey delivery

Workshops

$5,240 (inclusive of GST) was spent on the ten workshops over the funding period. Costs associated with each individual workshop include:

- Venue hire
- Travel to workshop venues (2 facilitators per workshop)
- Catering
- Printing of workshop materials

Factsheets

In addition to the time spent by the Policy Officer on the development of information factsheets, an additional $2,385 (inclusive of GST) was spent on:

- The print of information factsheets
- Consultation on legal information provided with the factsheets

Community Forums and Presentations

$1,995 (including GST) was assigned to the attendance of community forums and presentations mentioned within this report. Costs associated include registration fees required to attend conferences in which presentations were made.
Final budget and expenditure:

<table>
<thead>
<tr>
<th>Item/Activity</th>
<th>Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education, consultation, development and implementation of workshops (staff wages)</td>
<td>$12,380 (GST not applicable)</td>
</tr>
<tr>
<td>Workshop costs (publication of surveys, venue hire, education modules, catering and travel)</td>
<td>$5,240 (incl GST)</td>
</tr>
<tr>
<td>Publication of information factsheets</td>
<td>$2,385 (incl GST)</td>
</tr>
<tr>
<td>Conference and community forum attendance costs</td>
<td>$1,995 (incl GST)</td>
</tr>
<tr>
<td><strong>Total expenditure</strong></td>
<td><strong>$22,000 (incl GST)</strong></td>
</tr>
</tbody>
</table>
References


Rossen, F. V., Lucassen, M. F. G., Denny, S., & Robinson, E. (2009). Youth 07’: The health and wellbeing of secondary school students in New Zealand: Results for young people attracted to the same sex or both sexes. Auckland: The University of Auckland


