

Lesbian, Gay, Bisexual, Transgender and Intersex Discrimination in Society and the Workplace

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The lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Australia face discrimination in both their personal and work lives and the lateness of Federal legislation to protect them suggests that this is considered acceptable and indicates Australian culture is still heterosexist. Discrimination of the LGBTI community also occurs in other countries which indicates this is a global issue. This discrimination can lead to poor mental health and costs to workplaces. By implementing human resource (HR) policies that support LGBTI workers, workplaces can reduce discrimination, improve the health of their workers and reap financial rewards.

LGBTI employees for the first time in Australia are protected by Federal laws from discrimination. The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) passed both houses of parliament on June 25, 2013, received Royal Assent three days later and came into effect on August 2, 2013 (Australian Human Rights Commission 2013, p.1). Discrimination based upon sexual orientation has been called 'the last acceptable prejudice' (Bell et al. 2011, p.133). The Act inserts new grounds into the *Sex Discrimination Act 1984* (Cth) prohibiting discrimination based upon sexual orientation, gender identity and intersex status in areas including employment, education, purchasing of goods, services, housing and accommodation (Commonwealth of Australia 2013, p.4). Federal laws provided very few protections from discrimination before the Act was passed on the basis of sexual orientation, and none on the basis of gender identity (Australian Human Rights Commission 2011, p.25). Previously, the Human Rights Commission could only look at complaints of discrimination on the basis of 'sexual preference' (Australian Human Rights Commission 2013, p.1). The Act also changes the definition of 'marital status' and 'widowed' to include and prevent discrimination against de facto same-sex couples (Commonwealth of Australia 2013, p.4). Despite the significance that the Federal anti-discrimination laws have in breaking the 'last acceptable prejudice', it has taken too long for them to be legislated.

Most states and territories already had legislation protecting against discrimination on the basis of sexual orientation and gender identity. However, it was thirty five years from the first state law, the *Anti-Discrimination Act 1977* (NSW), until the enactment of the Federal anti-discriminatory laws (Human Rights Commission 2011, p.49). The new Act does though introduce more inclusive definitions and includes intersex status that was not covered previously by other laws in Australia (Australian Human Rights Commission 2013, p.1). The supporting memorandum upholds LGBTI person's rights to equality and non-discrimination in work, to an effective remedy, to a fair hearing and to the freedoms of thought, conscience and religion or belief and the right to freedom of association (Commonwealth of Australia 2013, p.5). These are all part of the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, both of which are 'core

human rights treaties' that Australia has ratified (Commonwealth of Australia 2013, p.5). Sadly, the long-time taken to get Federal protection of human rights for LGBTI persons is symptomatic of the discrimination and harassment they face in society.

Significant percentages of the LGBTI face prejudice and harassment from society. Seventy five per cent of respondents to a 2005 Victorian Gay and Lesbian Rights Lobby report had concealed their sexual orientation in public at least once to avoid discrimination and homophobic treatment (McNair & Thomacos 2005, p.6). 25.5 per cent of respondents to the 2012 second National Private Lives LGBTI study reported experiencing verbal abuse, 15.5 per cent harassment, 8.7 per cent threats of physical violence and 6.6 per cent written abuse (Leonard et al. 2012, p.47). Twenty per cent of LGBTI people in a study reported facing discrimination from health care workers because of their same sex relationships (Australian Human Rights Commission 2011, p.11). Additionally, an August 2013 Fairfax Nielson Poll found that 65 per cent of respondents were in favour of legalising same-sex marriage, and only 28 per cent were opposed. One week before the poll was conducted the then Prime Minister elect Tony Abbott referred to same sex marriage as being the 'fashion of the moment' and stated he did not believe legalising it was inevitable (Chan 2013; Johnson 2013). These examples indicate harassment and discrimination of the LGBTI community in Australia is still far from rare.

They also face prejudice and discrimination in the workplace as well as outside work. A 2002 report found that 59 per cent of LGBTI employees had experienced homophobic behaviour in the workplace (Australian Human Rights Commission 2010, p.7). One participant of a 2010 study of Australian lesbians lost a promotion after her sexuality was revealed to her manager, while other participants stated they felt vulnerable working in homophobic work environments (Rumens 2011, p.446). Racy Rapidfire, a transgendered woman, was forced off her Tasmanian female roller-derby team and was later rejected from try-outs by a Brisbane team. She suffered a mental breakdown and attempted suicide before eventually joining a women's hockey team without disclosing her transgendered status (*Head First: The Wrong Body* 2013). Carolyn Petit, a transgendered woman, works as a video game reviewer and journalist for the website Gamespot.com. Her video reviews resulted in many negative comments left by readers about her transgendered status such as 'it's a she, I think' and 'I don't want to see what is obviously a man, trying to look like a woman' (Johnson 2011). These are examples of prejudice and discrimination that LGBTI people encounter in and out of the workplace and demonstrate the need for the new Federal laws because elements of society still believe this is acceptable.

Despite this unacceptable treatment of the LGBTI community by some segments of Australian society when compared to America and the rest of the world, Australia is doing well (ILGA 2013, p.1). In 71 countries engaging in a same-sex relationship is punishable by imprisonment, while in another five countries it is punishable by death. America, home to at least nine million LGBTI persons, has been trying to pass the Employment Non-Discrimination Act since 1994 (Catalyst 2012; Johnson 2013b). In 2007 transgender provisions were removed from the Act, as it lacked the votes needed to pass with them

attached, but an outcry from the LGBTI community stopped it from being introduced (Johnson 2013b). In July 2013, a version which included provisions for protecting transgendered people was passed by a Congressional committee and was then passed by the Senate in November 2013 but has yet to be passed by the House (Johnson 2013b; Peters 2013). A 2009 study found that 97 per cent of American transgender employees had faced harassment or discrimination during their employment (Catalyst 2012). A 2011 study sent two resumes with equal qualifications to 1769 job listings in seven different American states; however one had an entry that identified the applicant as potentially LGTBI, for example being treasurer for a university LGBTI group. The heterosexual resumes had an 11.5 per cent chance of being called for an interview, but the LGBTI resumes had only a 7.2 per cent chance (Tilcsik 2011, p.601, 602, 605). America's Don't Ask, Don't Tell, which required homosexuals serving in the American military to remain closeted, was only repealed in 2011. This was supported by the Pentagon and 69 per cent of the American public, but was opposed by various members of Congress to the extent that it was feared it may not pass, while Australia has allowed openly homosexual people to serve since 1992 (O'Keefe 2010; Whitlock & Jaffe 2010). Jason Collins, an active pro-basket baller, came out in 2013 and became the first openly gay, active player in a major US team sport. He received support from other professional sports players and President Obama, but was subjected to death threats and abuse on social media and condemnation from conservative commentators (McCormick 2013). These examples, including the reluctance to pass federal non-discrimination laws or repeal Don't Ask, Don't Tell, show the level of discrimination against LGBTI persons in America is as much, if not more as in Australia.

Regardless of which country LGBTI persons live in, discrimination has a negative effect on their health and productivity as members of a society and workplace. LGBTI people are at increased risk of mental health problems, including depression, anxiety disorders, self-harm and suicide, due to discrimination and abuse (Leonard et al. 2012, p.32). This does not have to be overt, but may be questions like 'why aren't you married?' (Waldo 1999, pp.218-219). Company policies or events that are obviously phrased or geared towards heterosexual employees, for example only mentioning husbands or wives, establish a heterosexist culture where heterosexuality is perceived as the only acceptable sexual orientation which mentally damages LGBTI employees (Waldo 1999, pp.218-219). America's former Don't Ask, Don't Tell policy is an example of a heterosexist culture and the comments posted about Carolyn Petit's work on GameSpot indicates the gamer culture in the video games community. LGBTI employees often remain closeted at work for fear of being fired or discriminated against, construct false heterosexual lives, bring opposite sex friends to work functions to pose as partners and spend considerable energy and time trying to appear 'normal' to fit in with the heterosexist culture, but experience minority stress (Bell et al. 2011, p.134). Minority stress results from being a minority in an environment that is not accepted and can lead to negative physical and psychological outcomes (Waldo 1999, p.219). This negative affect on an employee's health can lead to decreased work satisfaction and productivity, increased absenteeism, difficulty concentrating, fear and desire to quit; all of which adds costs to the workplace (Colgan et al. 2007, p.603; Waldo 1999, p.229). Thus the negative

effects of discrimination in a heterosexist culture adversely impact both the LGBTI employees, and the organisations they work for.

There are a range of supportive HR policies organisations should implement to reduce discrimination against LGBTI employees. Diversity training or education with an LGBTI element or focus is a way a heterosexist culture can be broken down and is perceived by LGBTI employees to show the organisation values and supports them (Colgan et al. 2007, p.602; Huffman, Watrous-Rodriguez & King 2008, p.247). This training should be implemented at all management levels to properly educate and change a heterosexist culture as cultural change is most likely to succeed if managers publicly support and act upon it (Huffman, Watrous-Rodriguez & King 2008, p.247; Smith 2003, pp.250). Having senior leaders who are openly LGBTI is also seen as indicative of support and of a LGBTI friendly organisation and helps with cultural change (Colgan et al. 2007, p.602). Public statements of the organisation's support for its LGBTI employees, for example appearing on the workplace's intranet or pamphlets in the HR department, would also help communicate clearly and effectively they are welcomed and supported. Other ways of doing this are to indicate support in interviews, eliminate heterosexist questions for example about marriage and welcome same-sex partners to workplace social events (Colgan et al. 2007, p.602; Huffman, Watrous-Rodriguez & King 2008, pp.247-248). Also, strict non-tolerance of discrimination and the organisation's compliance with state and the new Federal anti-discrimination laws should be communicated to all employees (Huffman, Watrous-Rodriguez & King 2008, p.247). Surveys and other two-way communication could also be used to get anonymous information from its LGBTI employees about concerns and ideas they may have about increasing support for them (Huffman, Watrous-Rodriguez & King 2008, p.247). Finally, organisations should create or support LGBTI networks of employees as well as LGBTI mentoring schemes (Rumens 2011, pp.447, 456-457). LGBTI employees often have trouble finding each other and networks and mentoring can produce friendships between them that increase the support and workplace satisfaction they feel. These can also help them to create and manage their managerial identities when compared to how a typical male or female manager behaves in a heterosexist culture (Colgan et al. 2007, p. 602; Rumens 2011, pp.447, 456-457). Adopting these supportive policies should reduce or eliminate discrimination against LGBTI employees and lead to a more effective workplace.

Supportive HR policies can lessen the negative effects of discrimination, lead to positive outcomes and create a difference for both LGBTI employees and their organisations. LGBTI employees that have co-worker and manager support, which comes from seeing them implement and act upon supportive HR policies to lessen the feeling of being 'abnormal', often experience increased job satisfaction and commitment which lowers staff turnover and thus reduces costs (Huffman, Watrous-Rodriguez & King 2008, p.239, 240). Supportive policies can help eliminate the minority stress LGBTI employees feel and create an environment where they experience greater happiness, confidence, feelings of support, productivity, effectiveness, job enjoyment and loyalty to the organisation (Bell et al. 2011, p.139; Colgan et al. 2007, p.602). LGBTI employees have reported feeling 'lucky' to work in 'gay-friendly' organisations (Colgan et al. 2007, p.606). These policies can result in an

organisation being recognised by a LGBTI organisation and awarded the title of 'gay-friendly' employer which can result in it being an employer of choice for more and potentially better skilled and experienced job applicants (Bell et al. 2011, p.142; Truss, Mankin & Kelliher 2012, p.227). Additionally, an organisation that has a diverse workforce, for example a greater mix of heterosexual and homosexual employees, can lead to increased creativity, innovation and problem solving, as well as reducing costs from court cases by complying with state and the new Federal anti-discrimination laws (Jayne & Dipboye 2004, pp.409-410; Dickie & Soldan 2008, pp. 42-46). Finally, an American study found that 23 per cent of LGBTI adults switch brands to a company they found was supportive of LGBTI people and 71 per cent would remain loyal, even if it became costlier or less convenient, indicating a sales benefit (Catalyst 2012). Thus there are financial benefits to organisations that introduce supportive HR policies, as well as the obvious health benefits to their LGBTI employees.

Australia has introduced new Federal anti-discrimination laws that protect LGBTI people. However, the length of time it took to enact these laws and the discrimination they still face in society and workplaces indicates prejudice still exists. The fact that discrimination and prejudice also exists in many other countries, including America which lags behind Australia in its military and anti-discrimination legislation, suggests that it is a global problem. It also is indicative of a global heterosexist culture which causes negative effects and mental health problems for LGBTI people. When it occurs in workplaces it is costly for an organisation. Thus supportive HR policies should be adopted by organisations to reduce or eliminate discrimination which will improve workers' health and create positive financial results.

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