SUPPORTING LGBTQI+ DIVERSITY AND INCLUSION IN LEGAL EDUCATION

A 'HOW-TO' GUIDE FOR LAW SCHOOLS & LAW TEACHERS

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I INTRODUCTION

The law has a history of oppressing and excluding LGBTQI+ identities.[1] For many LGBTQI+ people, this remains an ongoing reality. Similarly, law schools have not always been welcoming environments for LGBTQI+ people. This is demonstrated by our research into LGBTQI+ diversity in Western Australian law schools, which we conducted with funding from the Law Society of Western Australia's Public Purposes Trust.[2]

As we have reported in earlier publications, our ethics-approved empirical study found that only 54% of LGBTQI+ law students felt that their law school provided an accepting environment for LGBTQI+ people.[3] We also found that, compared to their non-LGBTQI+ peers, LGBTQI+ law students self-censor more often, witness more bullying and harassment, and feel more stress when interacting with law school staff.[4]

There is much that we can do as law teachers to improve the experiences of LGBTQI+ people in our law school communities. This article provides law schools and law teachers with some introductory guidance as to how we can best:

  • demonstrate respect for our LGBTQI+ students, staff, and wider community;
  • be inclusive (so as to avoid excluding LGBTQI+ people from participating in education and the law); and
  • create safe, accepting, affirming environments in which LGBTQI+ people can feel free to be themselves.

II   RECOMMENDATIONS FOR LAW SCHOOLS

Universities and law schools can support LGBTQI+ students by visibly accepting, genuinely including, and tangibly supporting LGBTQI+ people.

Visible Acceptance

Visible signs that the law school environment is accepting of LGBTQI+ people can help LGBTQI+ students feel more safe and able to learn.[5] Law schools should visibly celebrate and acknowledge LGBTQI+ identities (for example, by celebrating IDAHOBIT – the International Day Against Homophobia, Biphobia, Intersexism and Transphobia) and encouraging staff to take part in Ally or inclusion training.[6] Findings from the qualitative limb of our study indicated that Ally paraphernalia (eg, supportive rainbow signs on office doors and logos in email signatures) made LGBTQI+ students feel that their law school 'promotes and encourages' LGBTQI+ people.[7]

Genuine Inclusivity

Whilst sending visible messages of acceptance is important, it needs to be backed-up by real and genuine action to promote inclusivity. An important part of this is fostering a 'zero tolerance' environment for harassment and bullying, including in relation to LGBTQI+ people. In particular, law schools should educate their students about microaggressions and their cumulative impact, as the qualitative limb of our study indicated that these were not uncommon occurrences in our law schools.[8] Law schools can also promote genuine inclusivity by ensuring there is adequate representation of LGBTQI+ people on staff and in the student cohort. Adequate representation of LGBTQI+ students can be fostered by including adversity experienced in relation to a person's LGBTQI+ status as a ground for admission through equity and diversity pathways. Finally, genuine inclusivity also requires work to develop a curriculum which is meaningfully diverse and inclusive of LGBTQI+ people and the issues relevant to them.[9]

Tangible Support

Law schools must work with their institutions to ensure that practical support tailored to the needs of LGBTQI+ students is available (eg, counselling services which are safe for LGBTQI+ people). At a local level, law schools should consider introducing LGBTQI+ advisory roles to provide formal support to staff and students. LGBTQI+ staff should occupy these roles, which must attract a formal workload allocation and provide opportunities for recognition in performance and promotion processes.

III   RECOMMENDATIONS FOR LAW TEACHERS

Law teachers can support LGBTQI+ diversity and inclusion by getting involved with implementing the school-based recommendations set out above (eg, by undergoing Ally or inclusion training). Law teachers should also follow inclusive teaching practices at all times.

It is not the case that a teacher only needs to consider inclusive teaching practice when teaching topics which directly and obviously concern the relevant community. Of course, we need to think about LGBTQI+ people when, eg, teaching cases about same sex marriage and gender recognition – but this alone is not enough. In fact, we need to consider LGBTQI+ people no matter what we are teaching. There are many matters which particularly affect LGBTQI+ people, and which might negatively impact LGBTQI+ people if not taught in an inclusive way. For example, discussions

about gender, sex, and reproduction often exclude people who are not cisgender. Similarly, discussions on relationships and family frequently exclude those who are not heterosexual. This is, in part, because these discussions often assume that people are cisgender and heterosexual. Some guiding principles and examples are set out below.

Guiding Principles

1. Do not assume that everybody is cisgender/heterosexual, and do not treat being cisgender/heterosexual as the norm;

2. Be aware that there are almost certainly many LGBTQI+ people in your law school community, and that there are likely to be a number of LGBTQI+ people in each class we teach (even if we don't know those people are LGBTQI+);

3. Before teaching anything, ask: How might this content affect LGBTQI+ people? How can I teach this in a way which respects and includes LGBTQI+ people? What sort of class discussion might this content spark, and how can I ensure that such discussion will respect and include LGBTQI+ people?

Examples

• Unless it is clearly appropriate in the particular context, avoid using language such as 'wife and husband' that assumes all relationships are heterosexual, as this excludes non-heterosexual people and devalues their relationships. Words and phrases like 'partner', 'spouse', 'parents', and 'in a romantic relationship' are examples of inclusive language.[10]

• Unless it is clearly appropriate in the particular context, avoid using gendered terms like 'ladies and gentlemen' or 'men and women' or 'guys' to refer to groups of people. Instead you can just say 'people', 'everyone', or 'adults' (if you need a term which explicitly excludes children). Not everybody fits within the binary – for example, intersex people have natural variations of their bodily sex characteristics, and non-binary people do not identify exclusively as male or female.

• Do not assume a person's gender based on the way they look, the way they sound, or by their name. Unless you know how a person identifies, it's good practice to just use the person's name instead of gendered terms like 'her', 'his', 'she', or 'him'. For example, if in a tutorial you are referring to a previous comment that Sam made, instead of saying 'As she just said, she doesn't think there's a duty of care because...', just say 'As was just said, Sam doesn't think there's a duty of care because...'

• Always avoid making generalisations on the basis of gender, and take particular care not to do so when talking about topics like human bodies and reproduction.

• If a source uses outdated or offensive language, only include it if you have to, and consider explicitly noting the impact of the offensive language and why the terminology is inappropriate.

As can be seen from the examples above, using appropriate language when talking to and about LGBTQI+ people is an important part of demonstrating respect for LGBTQI+ people. It can help to foster an environment in which LGBTQI+ people feel accepted, comfortable to be themselves, and able to participate and contribute without fear of discrimination. On the other hand, using inappropriate language can be alienating and deeply hurtful for LGBTQI+ people. It is important

to understand that this can be so even if done with good intentions and without meaning to cause exclusion, offence, or hurt. Some examples of acceptable and unacceptable language are set out in the table below.

Terminology

GENDER AND SEX		
INSTEAD OF...	SAY...	BECAUSE...
Transsexual	**Trans / Transgender**	Being trans is about gender, not sexuality.
FtM (female to male)	**Trans man / Man***	We focus on the person's identity, not their transition.
MtF (male to female)	**Trans woman / Woman***	
Sex change, sex reassignment, gender reassignment	**Gender affirmation / Gender confirmation**	Therapies (which might or might not include surgery) may affirm a person's gender, but not all trans people wish to or can access them. Whether or not a person has accessed affirmation therapies is irrelevant to the authenticity of their gender identity.
Pre-operative or post-operative	*Nothing* (it is not acceptable to refer to a trans person in this way)	
Gender dysphoria, gender identity disorder	**Gender incongruence**	The World Health Organisation endorsed this new term because distress (dysphoria) is not synonymous with being trans and being trans is not a psychiatric disorder.
Biological sex	**Sex assigned at birth**	'Biological sex' ignores the diversity of human bodies.
Hermaphrodite, disorders of sex development	**Intersex**	Previous terms are stigmatising and misleading.
SEXUALITY		
INSTEAD OF...	SAY...	BECAUSE...
Homosexual	**Gay / Lesbian**	Previous term has a clinical history and is still used by extremists who represent same-sex attraction as 'unnatural'.
Gay marriage	**Same-sex marriage / Marriage equality / marriage***	Not everybody who enters a same-sex marriage is gay – eg, the person may be bisexual.
NOTES		

* It is often most appropriate to simply use the basic term without any qualifier.
   o Eg, if Katrina and Sophie (who are both women) get married, it's best to refer to their relationship simply as a 'marriage' instead of othering them by calling it a 'same-sex marriage'.
   o Similarly, a trans woman is a woman and a trans man is a man – whilst it may be appropriate to include the word trans when describing the person in some contexts, this is not always the case.		

IV CONCLUSION

The published results from our empirical study reveal that much of the law school experience is similar for both LGBTQI+ and non-LGBTQI+ students, but that LGBTQI+ law students experience more adversity in certain law school contexts.[11] The strategies and guidance in this article provide practical first steps to help law schools and law teachers promote and support LGBTQI+ inclusion in legal education.

ENDNOTES

1: See, eg, Liam J Casey et al, 'Coping with the Australian Marriage Law Postal Survey and its Legacy' (2022) *Journal of Gay & Lesbian Social Services* (published online ahead of print).

2: Our study involved 253 law students: 102 from Murdoch University; 86 from the University of Western Australia; 33 from Edith Cowan University; and 32 from Curtin University. The study obtained ethics approval from the University of Western Australia's Human Research Ethics Office: research protocol RA/4/20/5525.

3: Aidan Ricciardo et al, 'Understanding, Promoting, and Supporting LGBTQI+ Diversity in Legal Education' (2022) 56(3) *The Law Teacher* 307.

4: Ibid.

5: Ibid 316–17.

6: For an example of Ally training, see University of Western Australia, *Ally Training* <https://www.web.uwa.edu.au/inclusion-diversity/sexualities/ally/training, UWA ALLY>. For an example of inclusion training, see SBS Inclusion, LGBTIQ+ Course <https://inclusion-program.com.au/lgbtiq>.

7: Ricciardo et al (n 3) 316–17.

8: Ibid 320.

9: See, eg, Paula Gerber and Claerwen O'Hara, 'Teaching Law Students about Sexual Orientation, Gender Identity and Intersex Status within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy' (2019) 68 *Journal of Legal Education* 416, 418.

10: Victorian Government, LGBTIQ Inclusive Language Guide <https://www.vic.gov.au/sites/default/files/2019-06/LBGTIQ-Inclusive-Language-Guide.pdf>.

11: Ricciardo et al (n 3) 334.

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