

Tribunals, diversity and the LGBTIQ community

Notes of presentation by Rodney Croome and Robin Banks
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Rodney: personal stories and better practices

The goal is professional service that treats everyone with equal dignity

- The aspiration of tribunal staff is to treat all clients professionally. This means treating them equally, decently and with dignity.
- But there can be barriers to this, not only in the discrimination jurisdictions that Robin and I are family with, but in any jurisdiction that deals with relationships, families and gender (which is all of them!).
- Indeed, there are more barriers to treating clients professionally than you may realise. Fortunately, these barriers are easier to overcome than you might fear.

Understanding the legal rights of LGBTIQ people

- One set of barriers is about knowledge of the rights of LGBTIQ people.
- Take the case of Hobart man, Ben Jago, whose same-sex partner died suddenly in 2015.
- Under Tasmanian law Ben was his partner's next of kin. They had lived together for five years and this qualified them to be considered significant partners (equivalent to de facto partners) with all the same rights as married couples in state law.
- However, the Coroner did not realise this because he wrongly believed same-sex partners must be in a state civil partnership to be considered next-of-kin.
- Labouring under this misapprehension, the Coroner designated Ben's late partner's estranged mother as next-of-kin.
- This meant Ben was forbidden to see his partner's body before he was buried, and initially refused access to the funeral.
- After lengthy negotiations Ben was allowed to attend the funeral as long as he sat down the back with the other friends, and didn't say anything.
- Ben's case illustrates how a relatively small misunderstanding about the law by a public official can escalate into significant trauma for LGBTIQ people

Understanding LGBTIQ identities

- Another set of barriers is about knowledge of LGBTIQ cultural identities and history.

- Several years ago there were a number of high profile cases about members of the Refugee Review Tribunal quizzing gay men who were applying for asylum on the grounds of sexual persecution to see if they were actually gay.
- Gay asylum seekers were reportedly asked to name Madonna songs and bars on Oxford Street to prove their identity, even though they were from non-English speaking backgrounds.
- I recall a similar situation in Tasmania where a complainant in a particularly traumatic case about anti-gay discrimination was asked by the tribunal member to explain what “LGBTIQ” means and why we use that acronym.
- In the complainant’s eye, this brought in to question the tribunal’s independence and objectivity.

Suspicion and low expectations

- Situations like the ones I describe are unusual and hopefully ever rarer. But they are given a high profile in the media, and passed on by word-of-mouth in the LGBTIQ community.
- This creates suspicion, anxiety and low expectations in the LGBTIQ community when members of that community interact with tribunal processes.
- To overcome this, and to ensure everyone is treated equally, tribunal staff need to reach out to the LGBTIQ community.
- Robin Banks will look more closely at how to foster better tribunal access in her presentation, but there’s two key solutions to the problems I’ve outlined that I want to canvass.

A key solution: professional development

- The first is professional development in LGBTIQ issues.
- To be effective this professional development must
 - a) be specific to LGBTIQ issues
 - b) cover legal rights, history and cultural identity, and
 - c) include LGBTIQ people themselves to talk and answer questions about our experiences
- I am a proponent of this kind of PD because I have seen the immense positive impact it can bring.
- For example, with consistent PD of the kind I describe over the last twenty years, the Tasmania Police has gone from one of the most repressive police services towards LGBTIQ people in Australia, to being one of the most accessible.

- PD that has been run for police, teachers and health workers can be easily adapted for tribunal staff.
- The other point about PD is that it must also include tribunal members. In each state there is professional development for judicial and semi-judicial officers. This must include LGBTIQ PD of the type described.
- Registrars and other tribunal staff can be advocates for tribunal members undertaking PD, and can set a standard by doing it themselves.

A key solution: an inclusive public face

- The second solution I'd like to canvass is about ensuring inclusion has a public face in tribunal offices.
- It might seem like a small thing to have a rainbow sticker in the window or an equality poster on the wall, but it will mean a great deal to LGBTIQ clients.
- Obviously, tokenism should be avoided. A rainbow flag in a tribunal office that hasn't undertaken PD and isn't aware of the needs of LGBTIQ people can make things worse.
- But after the time and effort taken to make a workplace inclusive, it's important to make sure everyone is aware of this inclusion.

Robin: Other practices that send messages

Forms and case-management systems (CMS)

Key considerations:

- Think about why you collect certain types of personal information, eg, gender, title, etc
- If there is not a good reason to collect this information, remove it from forms and CMS
- If there is a reason (and general government demographic data collection requirements probably constitute a good reason):
 - Include an explanation of why certain data is collected, who will have access to it, how it is used and ensure there is a clear and easy to follow reference to your privacy policy
 - Include options that reflect gender diversity in both gender: male, female, other (with a free-text field; and titles: Mr, Mrs, Ms, Mx
 - Include options that reflect diverse sexual orientation and family structures

Resources:

- *Australian Government Guidelines on the Recognition of Sex and Gender*, <<https://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>>
- *Making your service intersex friendly*, <<https://oii.org.au/services/>>

Public facing material

Key considerations:

- Is there anything to indicate that your services are LGBTIQ friendly and inclusive? Just like having an acknowledgement of country on public display and signs indicating accessibility features of your service for people with disability.
- If not, consider putting up some form of sign to indicate this (and be sure to fulfil the promise).
- Consider the option of getting Rainbow Tick accreditation

Resources

- LGBTI Inclusive Practice Service Accreditation (The Rainbow Tick), <http://www.glhv.org.au/lgbti-inclusive-practice>

Staff experience

Key considerations

- Staff who are LGBTIQ will reflect their experience of their work environment back into community. They need to feel the workplace is inclusive and respectful to both staff and service users from their community.
- There are a range of issues that might make a staff member feel their work environment is not LGBTIQ inclusive:
- Presumptions that just because people haven't identified as LGBTI or Q, they are not and so it is okay to be insensitive (this also ignores the fact that there may be staff who have family members or friends who are members of the community)
 - Eg, Asking a new male member of staff if he has a girlfriend
 - Avoid falling into the trap of 'don't ask don't tell', ie, creating a space in which it is safer to avoid disclosure
- Presumptions about people who do identify also need to be avoided:
 - Expressing surprise about relationship longevity, children, grandchildren, etc, because of stereotyped views of people in same-sex relationships, people who are transgender, etc.
- Expecting people who identify to lead the work of change or to be your local experts. They may just want to get on with their job, they are not paid to be your local experts.

Levels of privacy afforded to people having to provide information

Key considerations:

- Think about how people interact with the front-line of your service.
- If there is a public reception area at which people may be asked to provide information that may be sensitive, consider ways to provide a private space for those conversations to take place
- Ensure your privacy policy is displayed in areas the public access (including online)

Robin: Conscious & unconscious bias

Key issues

- Be aware that both conscious and unconscious bias continues to affect people

- Consider how attitudes and representation of members of the LGBTIQ community have changed over your working life
- Consider the current marriage equality survey and the range of attitudes that are being publicly expressed
- Be aware that the current marriage equality survey process is making many people relive trauma and feel emotionally exhausted and viewed as second-class citizens – while discussion may well be part of robust debate, be aware that it is affecting members of the community directly as it is their lives that are being debated.
- Be aware of what impacts on our personal attitudes: Family, school, politics, media, friends, experiences, powerful institutions like churches
- We can test our unconscious bias and by doing this can begin the work of challenging our own attitudes

Resources:

- Free online implicit association (unconscious bias) tests administered by Project Implicit at Harvard University: <<https://implicit.harvard.edu/implicit/>>
- Australian-specific Implicit Association test: <<https://implicit.harvard.edu/implicit/australia/takeatest.html>>
- Howard J Ross, *Everyday Bias: Identifying and Navigating Unconscious Judgments in Our Daily Lives* (2014, Rowman & Littlefield)
- Mahzarin R Banaji & Anthony G Greenwald, *Blindspot: Hidden Biases of Good People* (2013, Delacorte Press)

Robin: Changing for the more inclusive

Training:

- LGBTI issues training: contact ###
- Unconscious bias training: contact your local equal opportunity/discrimination agency (there is a drop down list with contacts available at: <<http://equalopportunity.tas.gov.au/resources/links>>
- Who should do training: everyone who interacts with others: members, staff, mediators

Audit current processes

Key issues:

- All of those aspects of an organisation that can indicate an organisation is unwelcoming or unaware need to be considered in auditing your organisation
 - Presentation
 - Privacy
 - Language and attitudes
 - Forms
- Involve the LGBTIQ community in the ongoing work of auditing and implementing a change program and pay members for their expertise
- Don't think you will understand the barriers: You don't know what you don't know!
- The Rainbow Tick accreditation is a good basis for an audit of service