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LGBTIQA+ and the Law: The Importance of Partnership in Improving Inclusion for the LGBTIQA+ Youth Community of Western Australia

An ANZSOG Teaching Case by Susannah Nichols for the Institute of Public Administration Australia (WA)

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Abstract

At the beginning of 2020, Legal Aid Western Australia was approached by a LGBTIQA+ youth advocacy group known as the Youth Pride Network to develop a legal information resource. With LGBTIQA+ young people facing exclusion in education and employment settings and struggling to navigate the laws that protect their rights, Jessica Baynes, Senior Solicitor, and her team at Legal Aid Western Australia, was drawn to assist the LGBTIQA+ youth community in understanding their legal rights. Despite having no additional resources or budget to devote to the project, and a busy workload of existing commitments, Baynes and her team recognised the importance of providing the requested information resource. Being driven by their core purpose to serve the community of Western Australia through legal education and representation, having the opportunity to empower the LGBTIQA+ youth was not something Baynes could turn away. With the decision to help made, Baynes had to develop a timeframe for the project that was feasible, with sufficient resources for development and distribution. Moreover, legal information relevant to the LGBTIQA+ youth community needed to be produced.

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Key Lessons

This case study demonstrates the capacity of the public sector in Western Australia to take on community-initiated projects. It also demonstrated the benefits of partnership with those with access to knowledge and expertise, with those who represent those marginalised people who benefit from this access to knowledge. Finally, the case study shows that empowering LGBTIQ+ youth with knowledge of their legal rights has the potential to strengthen their inclusion within the community.

Introduction

At the beginning of 2020, Jessica Baynes¹, a Senior Solicitor in the Early Intervention Services team at Legal Aid Western Australia, was faced with a dilemma of wanting to take on an important community-initiated project – creating an information resource for LGBTIQ+ young people – and the reality of having no additional resources to devote to the project. After being approached by the Youth Pride Network to answer questions on behalf of the LGBTIQ+² youth community (aged 12 to 25), the project that evolved from this put Baynes and her team in a pressured situation. Being driven by their core purpose, to serve the community of Western Australia (WA) through legal education and representation, having the opportunity to empower the LGBTIQ+ youth was not something she could turn away from. However, with her team's resources already allocated to other priorities, which included time and funding, the team had to determine if it could find a way to commit and do justice to this project, also.

Legal Aid Western Australia (Legal Aid) is the government funded public legal service for the WA community. The core purpose of Legal Aid is to provide 'access to legal services and information for all Western Australians' (Legal Aid Western Australia, 2022, n.p.). Part of this work has involved helping the WA community in understanding their rights under the law. Baynes and the team have developed education resources that seek to inform members of the community about the law (these resources work alongside targeted legal advice).

The Youth Pride Network are young people from the LGBTIQ+ community who have advocated for inclusion and acceptance of LGBTIQ+ youth within the broader WA community. A key feature of their advocacy is seeking systematic change to embed the rights and inclusion of LGBTIQ+ young people within the WA community (Youth Pride Network, 2018, n.p.). The Youth Pride Network have also provided targeted advice and resources for LGBTIQ+ young people, which included responding to questions that they have received on a range of topics related to the needs of this group. According to Charlotte Glance³, Project and Policy Coordinator and Co-Founder, for the Youth Pride Network, they received numerous requests from its members about legal rights in a range of settings (such as schools and the workplace), and the Youth Pride Network sought out assistance in developing a resource that would provide the required information.

1. Reflection activity:

At this point in the case, it is important to reflect on the concept of the inclusion of marginalised groups and the role of the public sector. Enhancing inclusion within the community can be seen as an important public value. Position yourself as a leader of a team or agency and consider potential strategies to empower your team to engage with, or seek out, opportunities to deliver public value.

Understanding the experiences of LGBTIQ+ young people in WA

The LGBTIQ+ youth community of WA have faced some serious hardships. In WA approximately 11 out of 100 people had identified as having a 'diverse sexual orientation, sex or gender identity', and 1.7% of all children born were intersex (Western Australian Department of Health, 2019, p. 14).

¹ Jessica Baynes, Senior Solicitor at Legal Aid Western Australia was interviewed for this case study. Baynes, J. (2022, May 19). Personal communication [Video interview].

² For this case, LGBTIQ+ has been chosen as the term to refer to any person who identifies as Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual and any person who identifies as having a diverse sexual orientation, sex or gender identity. However, this case acknowledges that this term does not capture or represent all members of this community. This term was acknowledged by the Youth Pride Network as the most inclusive term to use for the case.

³ Charlotte Glance, Project and Policy Coordinator and Co-founder for the Youth Pride Network, was interviewed for this case study. Glance, C. (2022, May 18). Personal communication [Video interview].

However, there has been suspected underreporting of the LGBTIQA+ youth community (Commissioner for Children and Young People, Western Australia, 2018, p. n.p.). A suggested reason for this is the avoidance (or fear) of discrimination.

In a report released by the Youth Pride Network, they provided an example of the discrimination experienced by LGBTIQA+ young people and its impact, noting that:

Young people who were experiencing violence, abuse and rejection at home often had a similar experience at school. Many young people were regularly deadnamed⁴, invalidated or bullied at school by both students and teachers.

...school is often a key system for identifying young people who are at risk, if the young person was forced to stay 'closeted' at school they were unlikely to disclose their situation to staff and be identified as requiring support (Youth Pride Network, n.d., p.24).

Discrimination has a significant impact on the wellbeing of the LGBTIQA+ youth community within WA who have experienced a higher rate of mental health challenges than the general population at the same age (Commissioner for Children and Young People, Western Australia, 2018, n.p.). Within the LGBTIQA+ youth community six out of 10 experienced verbal homophobic abuse, and two out of 10 experienced physical homophobic abuse, with 80% reporting it happens in a school-based environment. Young LGBTIQA+ people were also five-times more likely to attempt suicide than those who did not identify as a part of this group (Western Australian Department of Health, 2019, p.15; City of Perth, 2021, p.13).

Advocacy for inclusion

At beginning of 2020, the Youth Pride Network approached Baynes and her team at Legal Aid Western Australia (Legal Aid) about developing a legal information resource that would empower the LGBTIQA+ youth community with access to their legal rights. As Charlotte Glance from the Youth Pride Network noted, members of the LGBTIQA+ youth community had been asking the Youth Pride Network questions about their legal rights in education and work settings. Others who worked with LGBTIQA+ youth – such as youth workers, teachers and doctors - had also approached the Youth Pride Network for advice on the legal rights for this group. But, as Glance noted:

It is absolutely not the responsibility of young people to advocate for their inclusion.

... It is key for the public sector to understand not just the moral reality of this, because that only gets you so far, but the legal reality of the landscape they are in.

As a result, a knowledge of their rights is important for students so they can recognise discrimination. This then enables them to self-advocate when needed. While ideally organisations and institutions, such as schools, should uphold these rights, Glance said this does not always happen. She noted:

...young people are experiencing direct and indirect discrimination, but also that young people aren't able to identify when they are experiencing discrimination.

I think the idea that you can't be 'out' at school is so widely accepted that young people don't actually realise that it is something they have a right to.

The Youth Pride Network wanted LGBTIQA+ young people to be equipped with an understanding of their legal rights to empower them to self-advocate. A previous emphasis on negative outcomes experienced by the LGBTIQA+ community has led to perceptions of vulnerability and a need for 'protectionist approaches'. This in turn has perpetuated an 'othering' of LGBTIQA+ young people (Ceatha, et al., 2021, p. 2). In approaching Legal Aid, the Youth Pride Network were aiming to shift the expectations of LGBTIQA+ young people about their rights when in the community (i.e. when at school or work).

⁴ 'The act of using a trans or gender diverse person's birth name or a name that they no longer use. It is a deeply disrespectful act and is usually done to show the person doesn't acknowledge their autonomy and gender identity.' (Youth Pride Network, n.d., p. 4).

A key factor that drove the Youth Pride Network to approach Legal Aid was the complexity of the relevant laws. This was the result of LGBTIQ+ rights existing across multiple pieces of legislation, and across different jurisdictions. In addition, a lack of case law had not aided clarity. Moreover, court cases can be emotional, stressful, and expensive, which prevents marginalised individuals from challenging larger organisations in court.

In response to the request from the Youth Pride Network, Baynes noted:

When the Youth Pride Network first approached us, we thought, yep we'd love to... it's a gap in what's missing and...we are all about...community legal education.

[but] we have a range of ongoing core functions to deliver on, as well as projects that we had already committed to.

We did not have any additional funding or resources for this particular project...but we recognised that there was this incredibly vulnerable and marginalised group in Western Australia...and that we could provide valuable assistance by answering them.

With the decision to take on the project, Baynes was aware that time and financial resources would be a challenge and that the project needed to be completed in a reasonable timeframe. With the pandemic adding strain, Baynes knew she needed a comprehensive plan that would enable her team to meet their existing project deadlines and develop a meaningful resource for the LGBTIQ+ youth community.

2. Reflection activity:

Consider the LGBTIQ+ youth community and reflect on why laws have not been translated previously to help empower them and their inclusion within the broader community. How might this translation improve the quality and effectiveness of the public service?

What are the anti-discrimination laws and why are they important?

The laws that exist to protect rights of the LGBTIQ+ youth community in WA are numerous and challenging to navigate, operating as they do at state, federal and international levels. These include the *WA Equal Opportunity Act 1984*, *Sex Discrimination Act 1984*, as well as International Human Rights that are upheld by the Australian Human Rights Commission (Commissioner for Children and Young People, Western Australia, 2018, n.p.). These laws and rules aim to prevent discrimination - such as in education and employment - based on sex, sexual orientation, gender identity and intersex status (Legal Aid Western Australia, 2021a, pp. 6-9). For many LGBTIQ+ youth, a lack of knowledge by individuals and their advocates (who could be organisations, peers, family etc) about their rights under the law have left them vulnerable.

The WA Equal Opportunity Commission also highlighted complexities within the legislative framework to protect LGBTIQ+ young people. With regards to the *WA Equal Opportunity Act 1984*, the Commission noted:

...this process falls short because it does not cover extremely vulnerable...transitioning youth...who suffer an extremely high rates of mental health issues, self-harm and suicide, or people who do not wish to go through invasive procedures to gain a Gender Recognition Certificate, [as well as] people who are non-binary or gender fluid.

The federal Sex Discrimination Act 1984 does cover some transitioning and gender diverse people; however, employees of State or Local Government cannot access the federal Sex Discrimination Act in the area of employment (Equal Opportunity Commission, 2021, n.p.)

3. Reflection activity:

An understanding of, and working within, the legislative environment is standard practice in policy development and agency compliance. How can this be managed at the individual employee level?

Consider the role of agency management and accountability in ensuring individual employee compliance with anti-discrimination laws. What considerations are needed to ensure inclusion is upheld within the public sector?

The beginning of a productive partnership

Once it was determined they would not turn down a project that could benefit the LGBTIQ+ community, the question for Baynes and her team was how they would fit the project into an already full work schedule. The first step was advocacy within Legal Aid to take on the project. Next was to determine the project's scope and how expectations with the Youth Pride Network would be managed. Initially it was thought the project would be completed by the end of 2020, something found not possible once the complexity of the project was realised.

Baynes understood that the Youth Pride Network were essential in the development of relevant and targeted resources for the LGBTIQ+ youth community. In May 2020, the Youth Pride Network team reached out to the LGBTIQ+ youth community via social media (see Appendix 1) to ask what they would like to know about their legal rights. The Youth Pride Network then compiled the questions and gave these to Legal Aid.

The questions provided by the Youth Pride Network covered a range of topics, some of which were harder to answer than others. As Baynes noted

... we identified quickly questions we could answer and questions we couldn't.

The problem with this area of law, there is WA law, federal law, international human rights law, and case law...If a topic isn't addressed in any of these areas, from a legal perspective, we cannot answer it.

The Early Intervention Services team consulted with the Youth Pride Network to consolidate the questions into categories – these included: *education, employment, homelessness, changing gender, health care and taking action*. They then decided to add an additional topic, *international human rights*, to ensure that all areas of relevant laws were addressed. The team removed the topic, *privacy*, as they lacked expertise in this area.

The ambiguity of answers they provided soon became apparent. As Baynes noted:

We went into it [developing the factsheets] desperately wanting to be able to provide clear, definitive answers to every single question...we knew that somebody had gone to the effort of contacting Youth Pride Network and saying this is the question I want a lawyer to answer...But the general nature of the question[s] and the very unclear position of the law meant that pretty much every single answer was: *it depends*.

The team wanted to see how other public sector agencies were engaging with the laws. Of specific relevance were the departments of Education and Justice, which were consulted to gain their insights into their processes. However, because of the sensitivities, it was difficult for the team to gain meaningful information. This engagement was also hindered by the pressures the pandemic placed on the public sector. In addition, the team was aware that there was some sensitivity in relationships between government entities (of which Legal Aid is also included) and the LGBTIQ+ youth community based on their lived experiences, including such things as perceptions of discrimination experienced in a government setting.

From mid-2020, Legal Aid lawyers drafted a document over 100-pages long containing detailed legal research and responses to the questions. Dr Wibke Timmermann - who had expertise in hate speech and had worked previously for the United Nations - spent the following months researching answers to the questions provided by the Youth Pride Network. This included an overview of the LGBTIQ+ rights in each area and how the pieces of legislation worked to uphold these rights. Timmermann then provided her answers to the questions provided by the Youth Pride Network. An example of the types of questions asked included: *Can my school expel me for being queer?, What rights do transgender people have regarding bathrooms?, Can security remove me from a bathroom because I'm transgender?* See the example of the developed resource (factsheet) in Appendix 2 for details on how Legal Aid answered these questions.

Table 1: Topics researched by Legal Aid Western Australia (state, federal and international law)

Which laws protect the LGBTIQ+ community from discrimination in Western Australia
Which types of unfair treatment and areas of life are covered by these laws
Exceptions/exemptions under these laws
In how far schools are allowed to discriminate against LGBTIQ+ people, for example by expelling them or forcing them to use particular toilets
Discrimination in the area of employment
Homophobic or transphobic speech
The rights of religious organisations to discriminate against LGBTIQ+ people
Discrimination by homelessness support services
How to take action about discrimination
The laws relating to changing one's gender in WA, including practical information
The rights of transgender people in prisons
LGBTIQ+ rights in international human rights law, including gender recognition in international human rights law and the prohibition to send someone back to a country where they were persecuted on the basis of their sexual orientation or gender identity as well as how to take action in international human rights law
LGBTIQ+ terminology
Source: Provided by Legal Aid Western Australia (2022)

With the December 2020 deadline looming, the research document needed to be turned into an accessible format for the LGBTIQ+ youth community. Baynes was tasked with the challenge of converting it into four brief factsheets (see Appendix 2). After reviewing the document, she realised there was some overlap in the questions and further narrowed the categories to from seven to four – this included, *changing gender and health rights*, *discrimination*, *international human rights*, and a *terms used* factsheet that explained terminology. With no creative budget to translate the research into a digitally accessible and appealing format, Baynes drew on her own skillset to produce the final product. To make the fact sheets accessible, Baynes used plain English to ensure the information would reach its most non-legal audience. The factsheets provided an overview of the topic (i.e. discrimination) and launched into the frequently asked questions and responses. Additional resources were listed for further information and support.

By December 2020, Baynes was ready to send the initial draft factsheets to the Youth Pride Network for review and comment. At a meeting with the team, the Youth Pride Network received the draft factsheets - which would be the public documents - and the research document for internal information purposes only. The Youth Pride Network reviewed the documents and conducted an internal consultation process on the content, style, and design of the resource.

By mid-January 2021, the Youth Pride Network had provided their feedback to the team. Comments related mostly to language. Attempts to simplify language, however, were made difficult due to the legal aspect that certain words were required. There were also some problems around definitions of terms that are associated with the LGBTIQ+ community, and the Youth Pride Network were able to make some changes to these on the *Terms of Reference* factsheet. However, some terms were based in legal definitions and were unable to be changed. Moreover, there was tension between legal definitions and how the community defined themselves. The Youth Pride Network also provided feedback on the style of the factsheets to ensure they appealed to LGBTIQ+ young people. They also noted that not all referral pathways that were identified in the factsheets were appropriate (i.e. they were not allies of the LGBTIQ+ community). The suggested edits and the broader feedback were incorporated into the factsheets.

The team created a new webpage (*LGBTIQ+ Factsheets*) on the Legal Aid website within their Education and Resources section. The four factsheets were uploaded to the webpage in preparation for their public launch the following month.

On the 19 April 2021, the factsheets were ready to be officially launched. Given the limited resources available to the project at Legal Aid, Baynes noted the Youth Pride Network were essential in the factsheets reaching the intended audience, as the Youth Pride Network knew how to communicate with the LGBTIQ+ youth community.

Glance agreed that the release of the factsheets was an area where the Youth Pride Network could have significant influence. While they were constrained in some areas because of Legal Aid requirements - such as legal terminology

- once the factsheets were finalised, Youth Pride Network could adapt them for their audience. For example, they were able pay drag queens to create TikToks to promote the resources. Social media posts were created to connect the factsheets to the LGBTIQ+ youth community (see Appendix 3) as part of a series over a period of five weeks. Legal Aid also promoted the resources through their social media at the same time (see Appendix 4). The factsheets were also available on the Legal Aid and Youth Pride Network organisation websites (Legal Aid Western Australia, 2021b, n.p.; Youth Pride Network, 2021, n.p.).

Reaching the intended audience

The Early Intervention Services team planned to measure the outcomes of the project in two ways: First, statistics were gathered from social media and the Legal Aid and Youth Pride Network websites on engagement, including page visits, likes, downloads, and comments. Second, anecdotal feedback, such as from the Youth Pride Network or social media comments, was collected.

In May 2021, the Youth Pride Network provided the team with this information. Approximately 40,000 people had engaged with the posts across their website and their three social media platforms (see Table 2). The statistics provided did not include other social media pages and websites that had also shared the content. The Youth Pride Network also provided the team with feedback that they had received (see Table 3), advising it had been overwhelmingly positive.

Table 2: Youth Pride Network - statistics on engagement with the factsheets on various platforms (as of May 2021)

Website: 200+ visits
Instagram posts: 1,399 views
Instagram reels: 12,144 views
Tik Tok: 13,868 views
Facebook: 5,586

Table 3: Youth Pride Network – sample of feedback received on the factsheets

"Incredibly useful, thanks for sharing!"
"Thank you so much for putting together such a helpful resource (and making it shareable!)"
"This is great! I'm a queer person in Western Australia and this will be a great resource for my close circle of queer mates, thank you!"
"Love this"
"Hey fellow Aussie here! I don't live in WA but this is so helpful to my friends who live there! Is there a resource like this in QLD?"

From 5 March 2021 to 24 June 2021, the team also monitored and collated statistics on the engagement with their website through page views and downloads of the factsheets (Table 4).

Table 4: Legal Aid Western Australia – statistics on engagement with factsheets on Legal Aid website (5 May 2021 to 24 June 2021)

Page views: 559 – Changing Gender
Page views: 252 – Discrimination
Page views: 74 – International Human Rights
Page views: 208 – LGBTIQ+ Rights landing page
Page views: 189 – LGBTIQ+ Factsheets landing page
Downloads: 239 – Changing Gender factsheet
Downloads: 134 – Discrimination factsheet
Downloads: 85 – Terms Used factsheet
Downloads: 79 – International Human Rights Factsheet

Conclusion and key lessons

In May 2022 Baynes noted that, although imperfect, laws did exist to protect members of the community in WA. But there was a lack of awareness. Importantly, informing LGBTIQ+ young people of their legal rights, and empowering them to self-advocate, allowed these laws to better meet their potential. Moreover, as Baynes noted, there is an opportunity to learn from this experience and look to other areas where legal advocacy is needed.

Key lessons can be drawn from this case about the benefits of the public sector being open to community-initiated projects. First, partnership was essential. The partnership between Legal Aid and the Youth Pride Network ensured that the factsheets were relevant for the LGBTIQ+ youth community, and the information could reach the intended audiences. From her experience, Baynes noted that she learned the importance of being open to different communication strategies and that 'we need to collaborate with people who are in the know'. Empowering groups within the community is what drove the Early Intervention Services team, while collaborating with the Youth Pride Network enabled this to be achieved.

Second, the factsheets were a first of their kind in Australia for the LGBTIQ+ youth community. They created further opportunities to empower more people. For example, the Community Legal Education Network (CLEN) provided an opportunity for Legal Aid offices from across Australia to share information on projects, resources, and community legal information. Baynes noted the factsheets were an ideal project to share at this forum. Moreover, they could be adapted for other marginalised groups within the community, or LGBTIQ+ youth in other states with different state laws.

The developing partnership between Youth Pride Network and Legal Aid also had benefits, in building long term alliances. Importantly it also enabled Legal Aid to become an ally of the LGBTIQ+ community and to be seen as such. As Glance concluded

[The LGBTIQ+] community works on a peer referral network.

Young people will not access a service unless they either see demonstrated evidence that the service is inclusive, or that they have friends that have gone there and will vouch for it.

That's also one of the benefits that an organisation like Legal Aid gets out of a partnership like this; is that they've now got a trusted queer youth group speaking to a bunch of queer young people and saying, 'hey we work with these guys and they're ok'.

Baynes agreed with this perspective. She noted Legal Aid benefited from a strengthened relationship with the LGBTIQ+ community in two main areas:

...at the individual client level, they are happy to come in and get advice from Legal Aid... We know they are going to an organisation that is reputable, they will get correct information and they are going to be protected legally and know their rights...there are timeframes that they need to take action. Whereas if they know that there is a safe place where they can get information they can make informed decisions, they can protect their legal rights and they can feel empowered.

The other... is that we now have a very good working relationship with Youth Pride Network and also a greater understanding of the challenges that LGBTIQ+ young members of the community have when engaging with legal services.

Baynes noted that working with the Youth Pride Network and developing the factsheets was an important first step, but there was more to be done for inclusion of the LGBTIQ+ community. Legal Aid was working to build their collective knowledge of the LGBTIQ+ community, including LGBTIQ+ training for Legal Aid staff. At Legal Aid's annual conference they invited a transgender speaker to talk about transgender issues and how to ensure that the legal community can speak sensitively with transgender clients. This included correct pronouns in documentation; a rainbow flag displayed on the Legal Aid website, and an inclusivity statement on its website. Legal Aid now has a greater awareness of the systemic challenges the LGBTIQ+ community faces and engage with the Youth Pride Network to ensure they are not causing further harm.

Legislative reform may still be required to strengthen the rights and inclusion of the LGBTIQ+ community. As the Equal Opportunity Commission claims:

With an increasing number of young people in WA identifying as transgender and gender diverse the WA Equal Opportunity Act needs amending, as it does not provide protection from gender identity discrimination (Equal Opportunity Commission, 2021, n.p.).

But this case has shown how much can be achieved under existing legislative frameworks. As Baynes notes, the public sector can respond now to enhance inclusion through such things as inclusive language on all forms, correspondence, documentation and websites. Importantly, and a central lesson of this case study, is that the public sector can ensure existing legal rights of LGBTIQ+ people are understood within their agencies, communicated to the wider community, and *acted upon*.

Acknowledgments

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