

2017

Sex, Gender, Sexuality and the Law: Social and legal issues faced by individuals, couples and families
(Thomson Reuters, 2016) ISBN: 9780455237503
by Samantha Hardy, Olivia Rundle and Damien W Riggs

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Abstract

Sex, Gender, Sexuality and the Law: Social and legal issues faced by individuals, couples and families is a remarkable book. Gillian Triggs, President of the Australian Commission for Human Rights, describes it most accurately in her Foreword to the book as 'ground-breaking'.

Here is a publication, presented in four Parts, that sets out the experience, difficulties and discrimination faced by those members of our society that the book describes as trans or gender diverse, intersex, and/or non-heterosexual. (For space purposes only, this review refers to these groups as LGBTIQ, and acknowledges the limitations inherent in this acronym).

The insights the book provides are significant. The reviewers found that they frequently gained understandings which, in their experience, are not available elsewhere. Having all this information in one volume makes this an even more valuable resource.

The book is also remarkable, not just for the breadth of its discussion, but for its soundly based research and the straightforward language it uses. Statistical information throughout the book is covered exceptionally well, and allows the reader to make comparisons between Australian states, between countries and over time. Although the focus is primarily on Australia, the research is worldwide, and it is interesting to see where Australia fits, and what role it plays.

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LINDA FISHER* AND FRANCES DE BIASI**

I Introduction

Sex, Gender, Sexuality and the Law: Social and legal issues faced by individuals, couples and families is a remarkable book. Gillian Triggs, President of the Australian Commission for Human Rights, describes it most accurately in her Foreword to the book as ‘ground-breaking’.¹

Here is a publication, presented in four Parts, that sets out the experience, difficulties and discrimination faced by those members of our society that the book describes as trans or gender diverse, intersex, and/or non-heterosexual. (For space purposes only, this review refers to these groups as LGBTIQ, and acknowledges the limitations inherent in this acronym).

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The authors prompt the reader to think about how our society categorises different groups, and how these categories are culturally produced. They set the scene within a particular social and cultural context by stressing the importance of the language used to define both the issues

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** Frances De Biasi has been a family mediator and an FDRP for 26 years. He also worked for 12 years in NSW government policy and legislative development.

¹ Samantha Hardy, Olivia Rundle and Damien W Riggs, *Sex, Gender, Sexuality and the Law: Social and legal issues faced by individuals, couples and families* (Thomson Reuters, 2016) vi.

and the disparate members of the worldwide LGBTIQ community. They warn that the needs of these diverse groups often compete — a warning frequently unheeded by those not of the LGBTIQ community.

There is a good discussion on heterosexism, which is successfully argued as being sociocultural, and which privileges heterosexuality over all other sexual orientations. The authors note that this bias towards heterosexual people is described as the statistical norm; that is, a normative expectation against which others are seen as deviant, abnormal, or of lesser value. This leads, so say the authors, to the last bastion of heterosexism: the restriction of marriage to heterosexual couples, and the social stigma this occasions.

Transphobia and homophobia are also explored, the authors reminding us that these attitudes can result in self-loathing, which may lead to drug use, low self-esteem, a tendency towards suicide, truancy and homelessness by LGBTIQ people. The statistics show that this is a significant problem in Australia, with violence and abuse evident even among school children.

The book covers the different laws in Australian states on legal recognition of sex and gender diversity and the difficulties these can impose on those of indeterminate sex, transgender people, gays and lesbians. The information on these laws is helpful for those practising law, or working within its shadow. It also discusses laws relating to sexual harassment and vilification, and includes information demonstrating that, while women comprise a majority of people who are harassed in the workplace, men sexually harassing other men is an increasing phenomenon, which now accounts for nearly a quarter of all sexual harassment.

II What the Four Parts of the Book Address

Part 1 provides definitions of sex, gender and sexuality, and explores the diversity of each of the groups on which the book focuses. As the authors note, their aim is to use terminology that encourages the reader to think about the categories being referred to, and how they are culturally produced. The definitions are essential for understanding who makes up the diverse LGBTIQ communities. In addition, Part 1 outlines the difficulties faced in almost daily life by those whose sex, gender and sexuality do not conform to culturally dominant heterosexism. The authors include a section on discriminatory practices, including violence and victimisation, secondary victimisation at the hands of the law and information on laws related to harassment, vilification and their impacts on the relevant communities.

The information in Part 1 may shock someone who has not been exposed to this previously. However, for anyone working with LGBTIQ communities, or for friends and family members, it is essential for gaining a clear understanding of their realities. It certainly introduced new insights

to the reviewers, who have worked for many years as family mediators in this field.

Part 2 addresses different aspects of relationships among LGBTIQ people. We found the discussion on the potential difficulties of 'coming out' for older non-heterosexuals, given the societal and legal circumstances in which they had grown up, to be revelatory. It increased our understanding of their reluctance to disclose their sexual orientation and to form relationships.

This Part also provides a lucid discussion on both social and legislative recognition of relationships. It talks about the difficult impact of these on issues such as who has the authority for making major life and death decisions, financial matters such as superannuation and taxation benefits, social security and pensions, immigration, emergencies and aspects surrounding the death of a partner or loved one, such as the funeral. The authors note that while Australian relationship laws are largely non-discriminatory against non-heterosexual couples, the same cannot be said about trans or gender diverse and intersex people.

Part 3 turns to minority families. This refers to families that include at least one parent who is trans or gender diverse, and/or non-heterosexual. Of particular interest to the reviewers is the information provided on how different minority families are formed, and also ways in which children may be conceived. In addition, Part 3 focuses on the important issue of legal parentage. For instance, not being legally recognised as a parent may lead to difficulties with the social parent asserting his/her right to make decisions about a child, and may lead to his/her status being questioned by a school or a medical practitioner. The issue of legal parentage can also lead to problems if there is a relationship breakup.

Part 3 further discusses many aspects of these families and their lives, and in doing so, makes clear that there are areas of similarity with cisgender heterosexual families, as well as distinct differences and difficulties for minority families.

Part 4 has practical relevance for human service providers such as, for example, lawyers and mediators. As the authors note, the three chapters in this Part contain advice on using the information from the first three Parts in professional practice.

Chapter 15 reminds practitioners to stay alert to cisgenderism and heterosexism, and to the necessity of using appropriate language in practice. It also includes useful advice on creating an inclusive practice, as well as information on addressing client concerns such as avoiding inappropriate questions, insensitive treatment, discrimination and clients' needs not being addressed or dismissed.

Chapter 16 addresses relationships and legal systems, including the role of lawyers in advocacy. This Chapter brings into sharp focus the duty of lawyers to protect their clients' interests in all dealings with others. This focus also applies to legal practice where the lawyer is acting as negotiator. The chapter notes differences in managing power in these negotiations, as

some participants may apply cisgenderist or heterosexist views. There is a need for the lawyer to draw attention to the inappropriateness of such assumptions.

Chapter 17 discusses some of the considerations that mediators may find useful in their practice involving LGBTIQ clients. For instance, the Chapter raises the importance of mediators having cultural competency in this field, and discusses research conducted in 2009 relating to the lower rates of perceived client fairness, accessibility and satisfaction with outcomes for these clients. The authors also discuss the importance of mediators understanding the impact of cisgenderism and heterosexism on conflict behaviour patterns. In addition, impartiality, non-bias and issues concerning power, violence and safety for this client group are outlined.

III Audience for the Book

This book claims a wide audience. As well as being what we consider an essential resource for policy makers, legislators and government departments administering health and community services, it should be required reading for social-policy teachers, lawyers, social and community workers, aged care workers and their managers and mediators. There will, of course, be other professions for which it has much relevance. Additionally, LGBTIQ communities, families with LGBTIQ members — in fact anyone who is interested in the law's treatment of sex, gender and sexuality — will find this book valuable and informative.