

# **1** LGBTI-inclusive laws and policies in OECD countries: An overview

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This introductory chapter summarises the report's findings on the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and on the complementary policies that could help foster LGBTI inclusion. The report first defines the legislative and regulatory framework that is critical for the inclusion of sexual and gender minorities and then explores whether these laws are in force in OECD countries. It reveals that the road to LGBTI inclusion is *not* over the rainbow: *all* OECD countries have been making progress over the last two decades. But they are still only halfway to full legal inclusion of LGBTI individuals. Finally, the report sets out broader policy measures that should accompany LGBTI-inclusive laws in order to strengthen the inclusion of LGBTI people.

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The report *Over the Rainbow? The Road to LGBTI Inclusion* is part of the *OECD LGBTI inclusiveness project*<sup>1</sup> that was launched in 2016 following a Call to Action signed by 12 OECD Member countries<sup>2</sup> in order to foster the inclusion of sexual and gender minorities. LGBTI-inclusive laws are particularly critical for creating a culture of equal treatment of LGBTI individuals. One cannot expect to improve the situation of sexual and gender minorities if, to begin with, the law does not protect them against abuses or excludes them from social institutions. Enacting equality laws also improves LGBTI inclusion by shaping social norms (Valfort, 2017<sup>[1]</sup>).

In this respect, this report shows that the inclusion of LGBTI people in our societies has steadily improved over the past decades. Twenty years ago, no OECD country was allowing same-sex partners to marry. Same-sex marriage is now possible in 20 countries. The same holds for adoption rights and access to assisted reproductive technology by same-sex partners. In parallel, discrimination explicitly based on sexual orientation has become prohibited almost everywhere in the OECD area. Still, the road ahead to full LGBTI inclusion is long. Anti-LGBTI discrimination continues to hamper the economic prospects and mental health of millions in OECD countries, as revealed in the 2019 edition of *Society at a Glance*, the first major report of the OECD LGBTI inclusiveness project (OECD, 2019<sup>[2]</sup>). This finding is worrisome in a context where the share of people who self-identify as LGBTI is on the rise and may continue to increase with this trend being driven by younger cohorts: in the United States for instance, only 1.4% of respondents born before 1945 considered themselves as LGBT in 2017, compared to 8.2% among millennials, i.e. individuals born between 1980 and 1999.

Ensuring that LGBTI people can live as who they are without being discriminated against or attacked should be a concern for at least three reasons. The first and most important reason is obviously ethical. Sexual orientation, gender identity and sex characteristics are integral aspects of our selves. Guaranteeing that LGBTI people are not condemned to living in hiding or to retaliation when their identity is revealed is crucial for them to live their lives as they are, without pretence. The second reason is economic. Discrimination against LGBTI people hinders economic development through a wide range of channels. For instance, it causes lower investment in human capital due to LGBTI-phobic bullying at school, as well as poorer returns on educational investment in the labour market. Anti-LGBTI discrimination also reduces economic output by excluding LGBTI talents from the labour market and impairing their mental and physical health, hence their productivity. The third reason why LGBTI inclusion should constitute a top policy priority is social. LGBTI-inclusive laws tend to improve the overall acceptance of LGBTI people in society. Besides, LGBTI inclusion is viewed as conducive to the emergence of less restrictive gender norms that improve gender equality broadly speaking.

This report provides the first comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion. It identifies the legislative and regulatory framework that is critical for the inclusion of sexual and gender minorities, and explores whether these laws are in force, based on a unique questionnaire reviewed by OECD countries. By going beyond laws and regulations, the report also sets out the broader policy measures that should accompany LGBTI-inclusive legal provisions in order to strengthen the inclusion of LGBTI people.

The report reveals that:

- The road to LGBTI inclusion is *not* out of reach: although they are still only halfway to full legal inclusion of LGBTI individuals, *all* OECD countries have been making progress over the last two decades, notably thanks to the legal recognition of same-sex partnerships, equal adoption rights and better protection of LGBTI people against discrimination;
- Even some countries that used to perform poorly have become much more inclusive of LGBTI people;

- Still, even top-performing countries need to continue demonstrating leadership. In particular, many of the provisions critical for the inclusion of transgender and intersex people are in force in only a minority of these countries.

While advancing the LGBTI inclusion agenda may sometimes be challenging, this report also provides new evidence of its association not only with acceptance and quality of life of LGBTI people themselves, but also with gender equality and economic development. An increase in the share of LGBTI-inclusive laws that have been passed from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A rise in social acceptance of LGBTI people that is reflected in a 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality (from 3 to 5.5), a nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men (from 28% to 75%), a more than 25% increase in the share of respondents who support transgender people (from 34% to 43%), and a more than 50% increase in the share of respondents who support intersex people (from 28% to 43%);
- An improvement in gender equality that translates into a one-point increase on a 1-to-4 scale measuring support for gender equality (from 2 to 3), a more than two-fold increase in the share of women in parliament (from 15% to 34%), a one-third increase in female labour force participation (from 64% to 85%), and a 30% decrease in the gender wage gap (from 22% to 15%);
- An increase in real GDP per capita of approximately USD 3 200.

Finally, the report identifies what can be done, beyond passing LGBTI-inclusive laws, in order to strengthen the inclusion of LGBTI people. Analysis of good practices and nationwide action plans currently in force in one third of OECD countries highlights several complementary measures to make significant progress towards LGBTI inclusion:

- Enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, which entails (i) overcoming non-reporting, the default response of people facing discrimination; (ii) training police officers on properly dealing with hate crime targeting LGBTI people, and tackling the most challenging forms of hate speech, such as online hate speech; (iii) helping asylum officials process LGBTI asylum claims, and ensuring safety of LGBTI people in asylum detention and reception facilities.
- Policies aimed at fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields, which includes (i) guiding school staff on implementing an LGBTI-inclusive curriculum, and adopting a whole-school approach to combat LGBTI-phobic bullying; (ii) incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks; (iii) including compulsory modules in the initial education and career-long learning of health care staff, that will teach them about the specific health needs of LGBTI people, and how to approach LGBTI people, chief of which elderly LGBTI people, in an inclusive way.
- Actions to create and maintain popular support for LGBTI inclusion, such as (i) implementing well-designed awareness-raising activities that resonate with the general public and, hence, positively impact individual attitudes and behaviours, or (ii) encouraging government and public authorities to lead through exemplary official and individual conduct.

In addition, LGBTI-inclusive laws should be accompanied by a strong push to make LGBTI individuals better represented and more visible in national statistics.

## 1.1. Which laws are LGBTI-inclusive?

The protection of individuals on the basis of sexual orientation, gender identity and sex characteristics should not imply the creation of new or special rights for LGBTI people. It should rather stem from extending the same rights to LGBTI persons as those enjoyed by everyone else by virtue of international human rights standards. These standards are at the core of treaties, conventions or charters issued by the European Union, the United Nations, the Council of Europe or the Organization of American States that have been signed and ratified by OECD countries.

Applying these standards to LGBTI issues points to two broad categories of LGBTI-inclusive laws: (i) general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether, and (ii) group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI population. The analysis of the policy stance of countries in this report is based on these categories.

### 1.1.1. General provisions

General provisions consist in protecting LGBTI people against violence and persecution, but also discrimination and more generally ensuring their civil liberties. In a nutshell:

- The duty to safeguard the right to be free from violence requires governments to pass “hate crime laws” which permit authorities to deem acts motivated by bias against a protected list of grounds as an aggravating circumstance, either by defining such an act as a distinct crime or by enhancing punishment of an existing offense. To fully deter hate crimes, it is important to concomitantly combat severe forms of “hate speech” – while avoiding inappropriate restrictions on freedom of expression.
- Ensuring protection against discrimination of LGBTI people entails extending existing regulations for religious, ethnic or other protected categories to sexual and gender minorities. Similarly to other groups, protection of LGBTI people against discrimination should embrace the workplace, but also other fields where unequal treatment can emerge such as education, health care, or access to various goods and services, including housing.
- Protecting LGBTI asylum seekers living in one of the 68 countries where same-sex conduct is still criminalised requires to explicitly recognise persecution based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum.
- The universal guarantee of the rights to freedom of expression, peaceful assembly and association implies that no legal provision hinders expression promoting LGBTI people’s rights, erects barriers to the organisation of peaceful LGBTI public events such as pride parades, or impedes the registration, operation and access to funding of LGBTI human rights associations.
- In order to implement equal treatment legislation, international human rights stakeholders have also stressed the need for independent national human rights institutions, e.g. equality bodies, ombudspersons or human rights commissions, which should explicitly protect LGBTI people.

### 1.1.2. Group-specific provisions

Group-specific provisions aim at more specifically fostering equal treatment of lesbians, gay men and bisexuals, relative to heterosexual individuals:

- Same-sex and different-sex consensual sexual acts should be treated on an equal footing. This objective entails first and foremost decriminalising homosexual consensual acts. It also requires abrogating laws setting a higher age of consent for homosexual consensual acts. Otherwise, young

persons engaging in homosexual conduct would be subject to criminal penalties that do not apply to young persons of the same age who engage in heterosexual conduct.

- Legal recognition of same-sex partnerships is necessary to ensure equal treatment of same-sex and different-sex couples. This recognition entails passing registered partnership laws which grant same-sex couples with the same pecuniary rights as married couples. Equal treatment of same-sex and different-sex couples should also be conducive to the passage of same-sex marriage laws to guarantee that same-sex partnerships are endowed with the same social significance as that attached to heterosexual marriage.
- It is also important to give same-sex couples the same adoption rights. This objective requires opening to same-sex partners second-parent adoption, by which one of the two partners adopts her/his partner's biological or adopted children, without terminating the legal parent status of her/his partner. Equal treatment of same-sex couples also entails giving them access to joint adoption.
- Removing discriminatory restrictions in access to parenthood should also lead to equal access to assisted reproductive technology. In many countries, infertile different-sex couples can rely on medically assisted techniques using donated sperm and/or egg. In a few countries, infertile couples in which the woman is unable to carry children on her own can also access surrogacy. The principle of non-discrimination requires equal treatment across different-sex and same-sex couples in access to such technology, as well as equal treatment regarding automatic co-parent recognition: the same-sex partner of the parent who gives birth through medically assisted techniques should be automatically recognised as the second legal parent.
- Equal treatment of LGB and heterosexual individuals is obviously incompatible with conversion therapies, i.e. practices that aim to change an individual's sexual orientation from homosexual to heterosexual based on the false assumption that LGB people are suffering from a pathological condition which could be cured. Such therapies should be banned altogether.

Group-specific provisions also seek to address the unique challenges faced by transgender and intersex individuals in their battle to live as who they are. They entail:

- Depathologising being transgender. This objective requires three policy actions:
  - Not categorising being transgender as a mental illness in national clinical classifications.
  - Permitting transgender people to change their gender marker, i.e. sex and first name revealing an individual's gender, in the civil registry. To the extent that being transgender is *not* a mental disorder, a person whose gender identity is at odds with their sex at birth should not receive psychiatric therapy for the purpose of re-aligning their self-perceived gender with their body. Rather, transgender individuals should be entitled to legal gender recognition.
  - Not conditioning legal gender recognition on medical requirements, including sterilisation, sex-reassignment surgery and/or treatment, or psychiatric diagnosis.
- Allowing a non-binary gender option on birth certificates and other identity documents: this step is critical to ensure recognition of intersex and non-binary transgender people who do not self-identify as either male or female.
- Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent: this policy is crucial to avoid the physical and psychological sufferings of forced procedures which often outweigh the negative effects of being potentially exposed to stigma for not having external genitals that look "normal" enough to pass as female or male.

## 1.2. Are the laws in OECD countries LGBTI-inclusive?

Based on this policy framework, a questionnaire was designed to investigate whether the above-mentioned LGBTI-inclusive laws and regulations have been passed in OECD countries as of 30 June 2019. For LGBTI-inclusive provisions that are in force, the questionnaire also provides the year when these provisions first came into effect. This information was collected by the OECD, based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35).

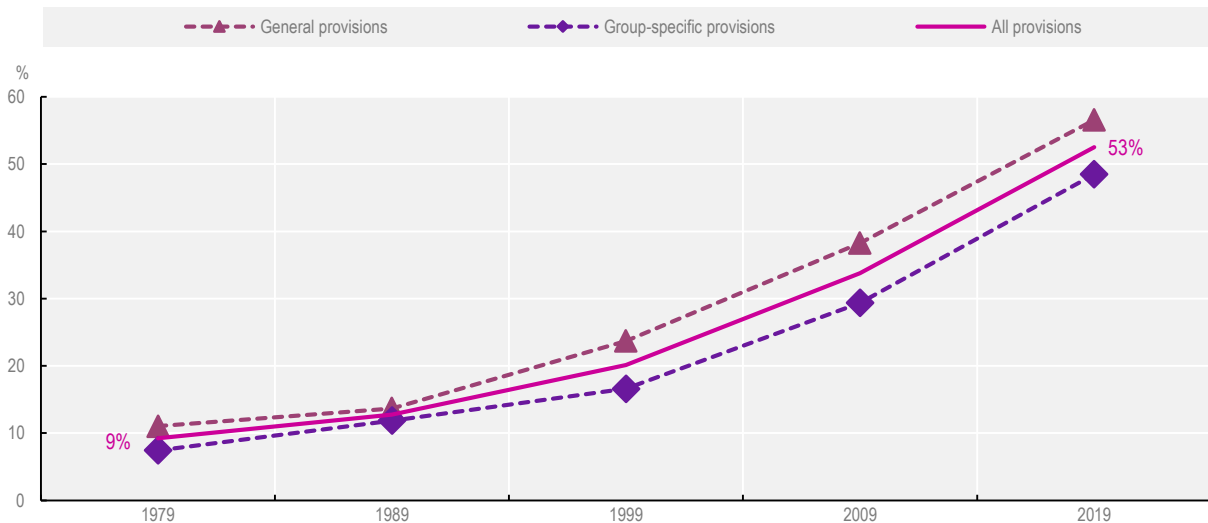
This information is used to compute legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force in a given OECD country among the set of legal provisions defined in Section 1.1. The measure is constructed by weighting general and group-specific provisions the same, and within the latter category, LGB- and TI-specific provisions the same as well (see Figure 1.2).

### 1.2.1. Moderate legal LGBTI inclusivity OECD-wide, but rising

OECD countries are slightly more than halfway to full legal acceptance of LGBTI people: legal LGBTI inclusivity is equal to 53% as of 2019. But legal LGBTI inclusivity is strongly improving: it has risen nearly six fold since the late 1970s, when less than 10% of laws critical for LGBTI inclusion were passed. The bulk of this increase occurred in the past 20 years and is driven by passage of both general and group-specific provisions (Figure 1.1).

#### Figure 1.1. Legal LGBTI inclusivity in OECD countries is on the rise

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Section 1.1 that are in force in OECD countries, between 1979 and 2019. It distinguishes between all provisions, general provisions and group-specific provisions.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Figure 1.2 provides additional insights. It reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019, and its variation between 1999 and 2019. The figure reveals that the component that provides the strongest contribution to legal LGBTI-inclusivity as of 2019 relates to the protection of civil liberties of LGBTI individuals. No legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. However, attempts to pass anti-gay propaganda laws have occurred in some OECD countries. Moreover, in some instances, public authorities erected barriers to the organisation of peaceful LGBTI public events such as pride parades, or threatened the registration, operation and access to funding of LGBTI human rights associations.

## Figure 1.2. Legal LGBTI inclusivity varies significantly over time and across components

Legal LGBTI inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies (level as of 2019 in percentage and variation between 1999 and 2019 in percentage points)



Note: This figure reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019 (in percentage), and its variation between 1999 and 2019 (in percentage points). The variation in legal LGBTI inclusivity is computed between 1999 and 2019 for two reasons: (i) the bulk of the increase in legal LGBTI inclusivity occurred in the past 20 years (Figure 1.1); (ii) 1999-2009 is the decade when all OECD countries were enjoying political independence for the first time, following the collapse of the Communist regimes in Eastern Europe in the early 1990s. The abbreviation “wgt” in the figure refers to “weight”. It recalls that general and group-specific provisions are given equal weight when computing level of legal LGBTI inclusivity across all 15 components, meaning that each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight. Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Figure 1.2 also unveils that, between 1999 and 2019, OECD countries made the greatest strides with respect to the following five components:

- *Legal recognition of same-sex partnerships*: same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) in 2019, while no OECD country was allowing same-sex partners to marry in 1999;
- *Equal adoption rights*: both second-parent adoption and joint adoption by same-sex partners is legal in 20 OECD countries in 2019, up from only one OECD country in 1999;
- *Protection of LGBTI people against discrimination*: e.g. discrimination explicitly based on sexual orientation is prohibited in employment in 32 OECD countries in 2019, up from 11 OECD countries in 1999;
- *Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission*: e.g. a human rights institution in charge of supporting victims of discrimination explicitly based on sexual orientation is present in 29 OECD countries in 2019, up from six OECD countries in 1999;
- *Protection of LGBTI people fleeing persecution abroad*: e.g. persecution (or a well-founded fear of persecution) explicitly based on sexual orientation is recognised as a valid ground for granting asylum in 24 OECD countries in 2019, up from four OECD countries in 1999.

Although general and group-specific provisions contribute almost equally to the rise in legal LGBTI inclusivity, OECD countries are less active with respect to group-specific provisions. Figure 1.3 reveals a lack of laws to advance the rights of transgender and intersex people. In 2019, although 59% of LGB-specific provisions were in force, this was the case of only 38% of the provisions critical for the inclusion of transgender and intersex persons. However, OECD countries are catching up: in the past 10 years, TI-specific provisions were passed at a faster pace. OECD countries have made particularly strong progress in depathologising legal gender recognition. In 2019, 15 OECD countries allow transgender people to change their gender marker on birth certificate and other identity documents without attaching medical requirement to this process (at least in some parts of their national territory), while *no* OECD country was allowing legal gender recognition without sterilisation, gender-reassignment surgery and/or treatment, or mental health diagnosis in 2009.

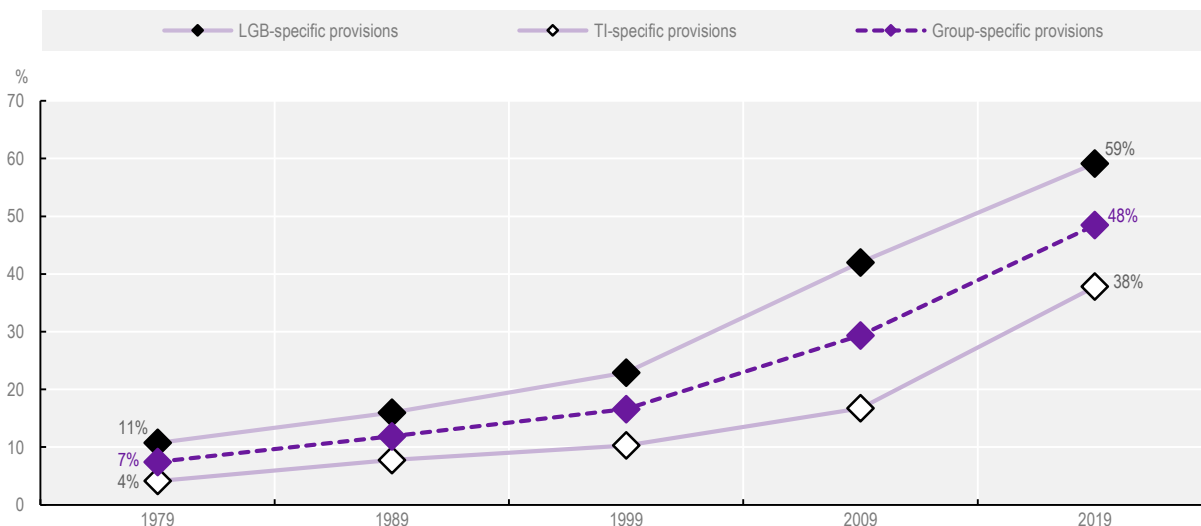
### **1.2.2. Unequal levels and trends across countries but progress everywhere**

Legal LGBTI inclusivity varies significantly by country, ranging from 25% among the three least active countries – Japan, Turkey and Korea – to 79% among the three most active countries – Canada, Portugal and France (Figure 1.4). EU Members are overrepresented among OECD countries whose legal LGBTI inclusivity is above the OECD average as of 2019, which reflects the strong normative framework in favour of LGBTI equality required by EU institutions.



### Figure 1.3. OECD countries are lagging behind on the legal inclusion of transgender and intersex people, but slowly catching up

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (group-specific provisions, LGB-specific provisions and TI-specific provisions)

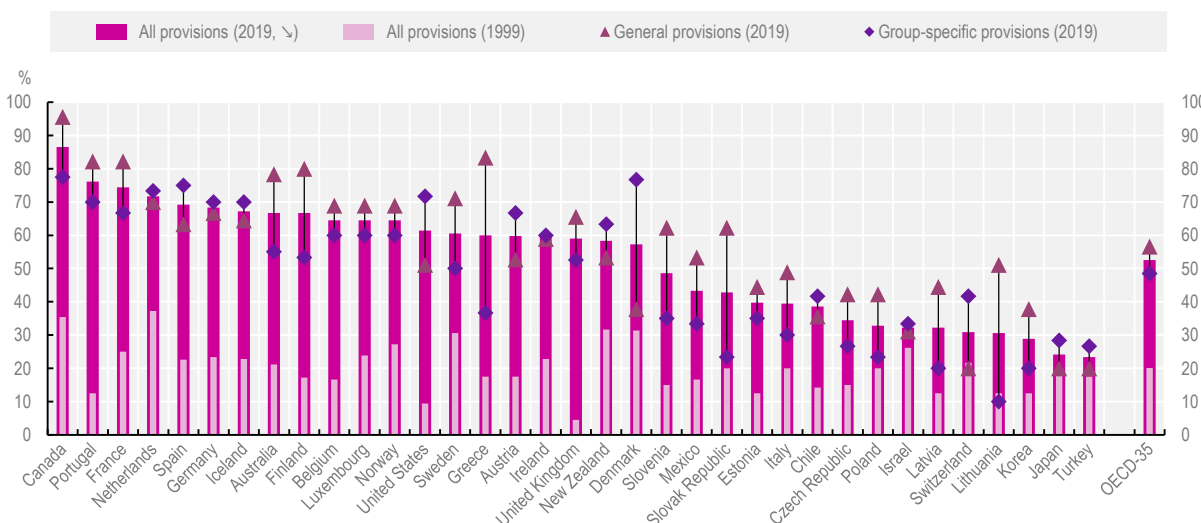


Note: This figure reports the share of legal provisions highlighted in Section 1.1 that are in force in OECD countries, between 1979 and 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions.  
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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### Figure 1.4. Legal LGBTI inclusivity is improving in all OECD countries

Legal LGBTI inclusivity as of 1999 and 2019, by OECD country (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of provisions highlighted in Section 1.1 that are in force in OECD countries, as of 1999 and 2019. For year 1999, it focuses on all provisions. For year 2019, it distinguishes between all provisions, general provisions and group-specific provisions. (∨) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.  
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Overall, OECD countries can be grouped into three performance tiers:

- A bottom-performing tier characterised by below-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (14 countries: Chile, Czech Republic, Estonia, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Switzerland and Turkey) ;
- A middle-performing tier characterised by trends that suggest position relative to the OECD average may change in the near future, for better (Slovenia) or worse (Denmark, New Zealand and Sweden) ;
- A top-performing tier characterised by above-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (17 countries: Australia, Austria, Belgium, Canada, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, United Kingdom and United States).

Yet, despite this strong cross-country variation, *all* OECD countries are making progress (Figure 1.4). The strongest growth occurred in Portugal (+63 percentage points, from 13% to 76%), while the weakest growth occurred in Turkey (+5 percentage points from 18% to 23%).

Past performance of OECD countries regarding legal inclusion of LGBTI people does not fully predict current performance, and both positive and negative shifts have occurred between 1999 and 2019. Seven countries that were below the OECD average in 1999 have managed to emerge above this average in 2019: Austria, Belgium, Finland, Greece, Portugal, United Kingdom and the United States. The strides made between 1999 and 2019 by Portugal and the United Kingdom have been tremendous. For instance, legal LGBTI inclusivity increased by 55 percentage points in the United Kingdom, from 16 percentage points below the OECD average in 1999 to 6 percentage points above this average in 2019. By contrast, two countries, Israel and Switzerland, have fallen below the OECD average as of 2019 while they were above this average in 1999. Their decline is significant. For instance, Israel was 6 percentage points above the OECD average in 1999 but 21 percentage points below this average in 2019. These drops are not due to steps backward. Instead, they reflect that these countries have made progress at a much slower pace than other OECD countries.

### ***1.2.3. There is still a long way to go before reaching full legal LGBTI inclusion, including in top-performing countries***

Table 1.1 analyses the prevalence of LGBTI-inclusive provisions among the various OECD performance tiers and reveals that even top-performing countries are still far from full legal LGBTI inclusion. The table classifies the various types of legal provisions along whether they have been passed among bottom-, middle- and high-performing countries.

Several top-performing countries haven't passed all the provisions that are in force in a majority of bottom- and middle-performing countries. Moreover, there are many provisions that only a minority of countries have implemented. For instance, hate crime and hate speech laws based on sex characteristics are in force in only one OECD country nationwide (Canada), while conversion therapy is illegal in a very limited number of OECD countries (three) and only at the subnational level. It is important that top-performing countries continue demonstrating their leadership by passing those ground-breaking provisions, so that they progressively become standard equality measures.

**Table 1.1. Legal provisions fostering the inclusion of transgender and intersex people are overrepresented among those that are high-hanging and ground-breaking**

Prevalence of LGBTI-inclusive provisions among the various OECD performance tiers as of 30 June 2019

	Share of countries where the legal provision(s) is(are) in force throughout the national territory among...		
	... bottom-performing countries	... middle-performing countries	... top-performing countries
<b>LOW-HANGING LEGAL PROVISIONS</b>			
<u>Protection of LGBTI people's civil liberties: Freedom of expression, assembly and association</u>	all	all	all
<u>Equal treatment of same-sex (SS) and different-sex (DS) consensual sexual acts: No criminalisation of SS consensual sexual acts; Equal age of consent across SS and DS sexual acts</u>	majority:93%	all	all
<u>Legal gender recognition</u>	majority:86%	all	all
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on SO</u>	majority:64%	all	majority:94%
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on SO</u>	majority:64%	all	majority:94%
<b>MIDDLE-HANGING LEGAL PROVISIONS</b>			
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on GI</u>	minority:50%	majority:75%	majority:82%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on SO</u>	minority:29%	majority:75%	majority:59%
<u>Equal adoption rights: Second-parent adoption (SPA) and joint adoption (JA) legal for SS partners</u>	none	majority:75%	majority:94%
<u>Legal recognition of same-sex partnerships: Same-sex marriage legal</u>	none	majority:75%	majority:88%
<u>Equal access to assisted reproductive technology: Equal treatment in access to medically assisted insemination (MAI) and/or in vitro fertilisation (IVF) across same-sex and different-sex partners; If MAI and/or IVF are legal for same-sex partners, automatic co-parent recognition is legal; Equal treatment in access to surrogacy</u>	minority:7%	majority:75%	majority:71%
<b>HIGH-HANGING LEGAL PROVISIONS</b>			
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on SO explicitly recognised as a valid ground for granting asylum</u>	minority:36%	minority:50%	all
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on GI explicitly recognised as a valid ground for granting asylum</u>	minority:29%	minority:50%	majority:88%
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on GI</u>	minority:21%	minority:50%	majority:88%
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on SC</u>	minority:7%	minority:25%	majority:59%
<u>No medical requirement attached to legal gender recognition</u>	minority:7%	minority:25%	majority:59%
<u>Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors</u>	minority:29%	minority:50%	majority:53%
<b>GROUND-BREAKING LEGAL PROVISIONS</b>			
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on SC</u>	none	none	minority:47%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on GI</u>	none	minority:25%	minority:35%
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on SC explicitly recognised as a valid ground for granting asylum</u>	none	minority:25%	minority:29%
<u>Being transgender not categorised as a mental illness in national clinical classification</u>	none	minority:25%	minority:24%
<u>Availability of a non-binary gender option on birth certificates and other identity documents</u>	none	minority:25%	minority:24%
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination based on SO, GI and/or SC in the Constitution</u>	minority:7%	minority:50%	minority:12%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on SC</u>	none	none	minority:6%
<u>Ban on conversion therapy</u>	none	none	none

Note: “Low-hanging legal provisions” refers to legal provisions that are low-hanging fruits, i.e. passed by a majority of countries in all performance tiers, including the bottom-performing category. “Middle-hanging legal provisions” refers to legal provisions that are middle-hanging fruits, i.e. passed by a majority of countries, but only in the middle- and top-performing category. “High-hanging legal provisions” refers to legal provisions that are high-hanging fruits, i.e. passed by a majority of countries, but only in the top-performing category. “Ground-breaking provisions” are the legal provisions passed by only a minority of countries in all performance tiers, including the top-performing category. “SO” refers to “sexual orientation”, “GI” to “gender identity” and “SC” to “sex characteristics. Cells in pink refer to a situation where the legal provision(s) analysed is(are) in force in a majority of countries among the performance tier under consideration.  
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

### 1.3. Why improving the inclusion of LGBTI people in society matters?

While advancing the LGBTI inclusion agenda may sometimes be challenging, this report provides new evidence of its association not only with acceptance and quality of life of LGBTI people themselves, but also with gender equality and economic development.

#### 1.3.1. Legal LGBTI inclusivity and social acceptance of LGBTI people

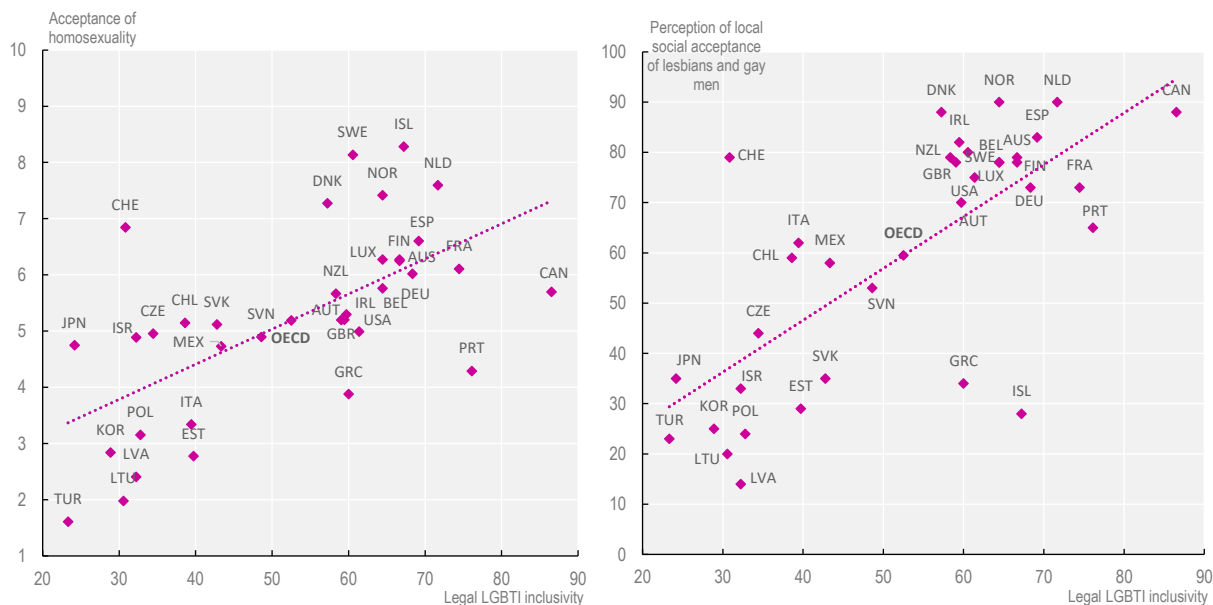
While countries with greater acceptance of sexual and gender minorities are more likely to pass LGBTI-inclusive laws, evidence shows that legal changes in favour of LGBTI people in turn do cause changes in attitudes towards this population. Indeed, individuals perceive legal changes as reflections of advancements in what is socially acceptable and many are willing to conform to these shifts (Tankard and Paluck, 2017<sup>[3]</sup>). For instance, in European countries where same-sex marriage is legal, acceptance of homosexuality increased much faster after those countries adopted same-sex relationship recognition policies (Aksoy et al., 2020<sup>[4]</sup>). Similarly, same-sex marriage legalisation across U.S. states led to an increase in employment of people in same-sex couples, a change driven by improvements in attitudes towards homosexuality and, hence, lower discrimination against LGB individuals (Sansone, 2019<sup>[5]</sup>).

Figure 1.5 and Figure 1.6 confirm a significant positive relationship between legal LGBTI inclusivity and acceptance of LGB, transgender and intersex people. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality, from 3 to 5.5 (left panel of Figure 1.5);
- A nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men, from 28% to 75% (right panel of Figure 1.5);
- A more than 25% increase in the share of respondents who support transgender people, from 34% to 43% (left panel of Figure 1.6);
- A more than 50% increase in the share of respondents who support intersex people, from 28% to 43% (right panel of Figure 1.6).


## Figure 1.5. Legal LGBTI inclusivity is positively associated with acceptance of lesbians and gay men

Relationship between legal LGBTI inclusivity, acceptance of homosexuality (left panel) and perception of local social inclusion of lesbians and gay men (right panel)



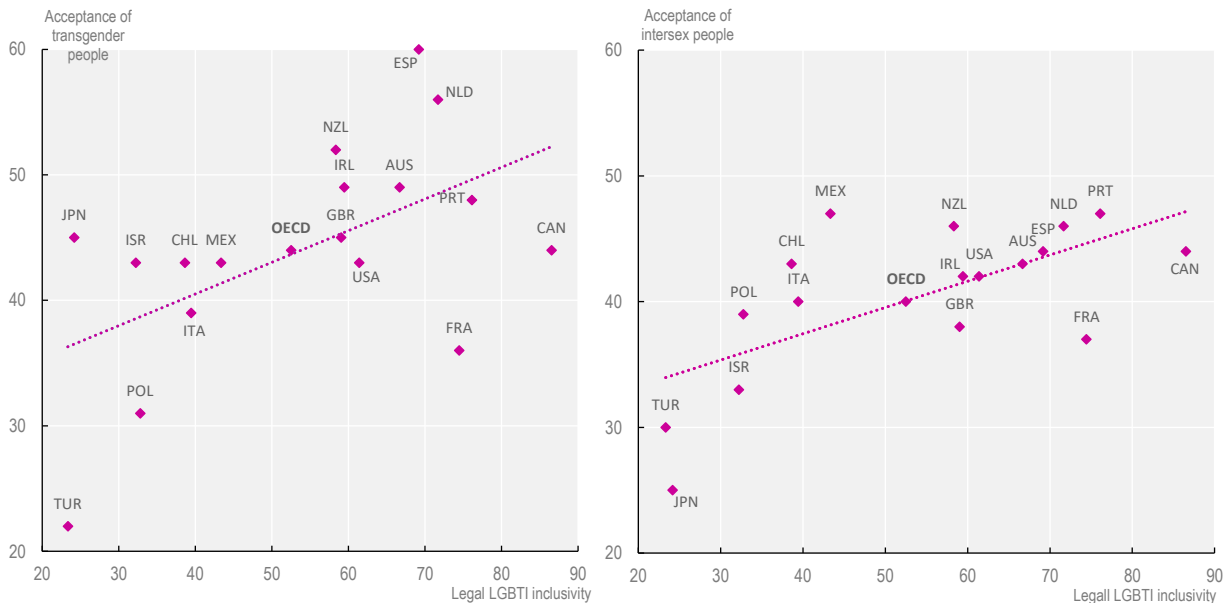
Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the left panel, acceptance of homosexuality is measured on a scale from 1 to 10, where 1 means that homosexuality is never justified and 10 means that it is always justified. It is based on the following question: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between using this card.* This question is part of a battery of several questions about controversial behaviours and issues (e.g. abortion, divorce, euthanasia, prostitution, etc.) that have been asked in the following cross-country surveys: the AsiaBarometer, the European Values Survey, the Latinobarometro and the World Values Survey. Only survey rounds that occurred after 2001 are used. In the right panel, the perception of local social acceptance of lesbians and gay men refers to the share of respondents to the 2018 Gallup World Poll who consider that their area of residence is a good place to live for gay men or lesbians. It is based on the following question: *Is the city or area where you live a good place or not a good place to live for gay or lesbian people?*

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on AsiaBarometer, European Values Survey, Latinobarometro and World Values Survey, and Gallup World Poll.

StatLink  <https://stat.link/qadgbf>

## Figure 1.6. Legal LGBTI inclusivity is positively associated with acceptance of transgender and intersex people

Relationship between legal LGBTI inclusivity, acceptance of transgender people (left panel) and acceptance of intersex people (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the left panel, acceptance of transgender people refers to the average share of respondents to the 2016 ILGA survey who answer “Yes” to the following two questions: (i) *If a male child always dressed and expressed himself as a girl, would you find that acceptable?*; (ii) *If a female child always dressed and expressed herself as a boy, would you find that acceptable?* In the right panel, acceptance of intersex people refers to the share of respondents to the 2016 ILGA survey who answer “No” to the following question: *Do you think that children whose genitals are unclear at birth should be surgically assigned a gender by medical professionals?*

Source: 2016 ILGA survey.

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### 1.3.2. Legal LGBTI inclusivity and gender equality

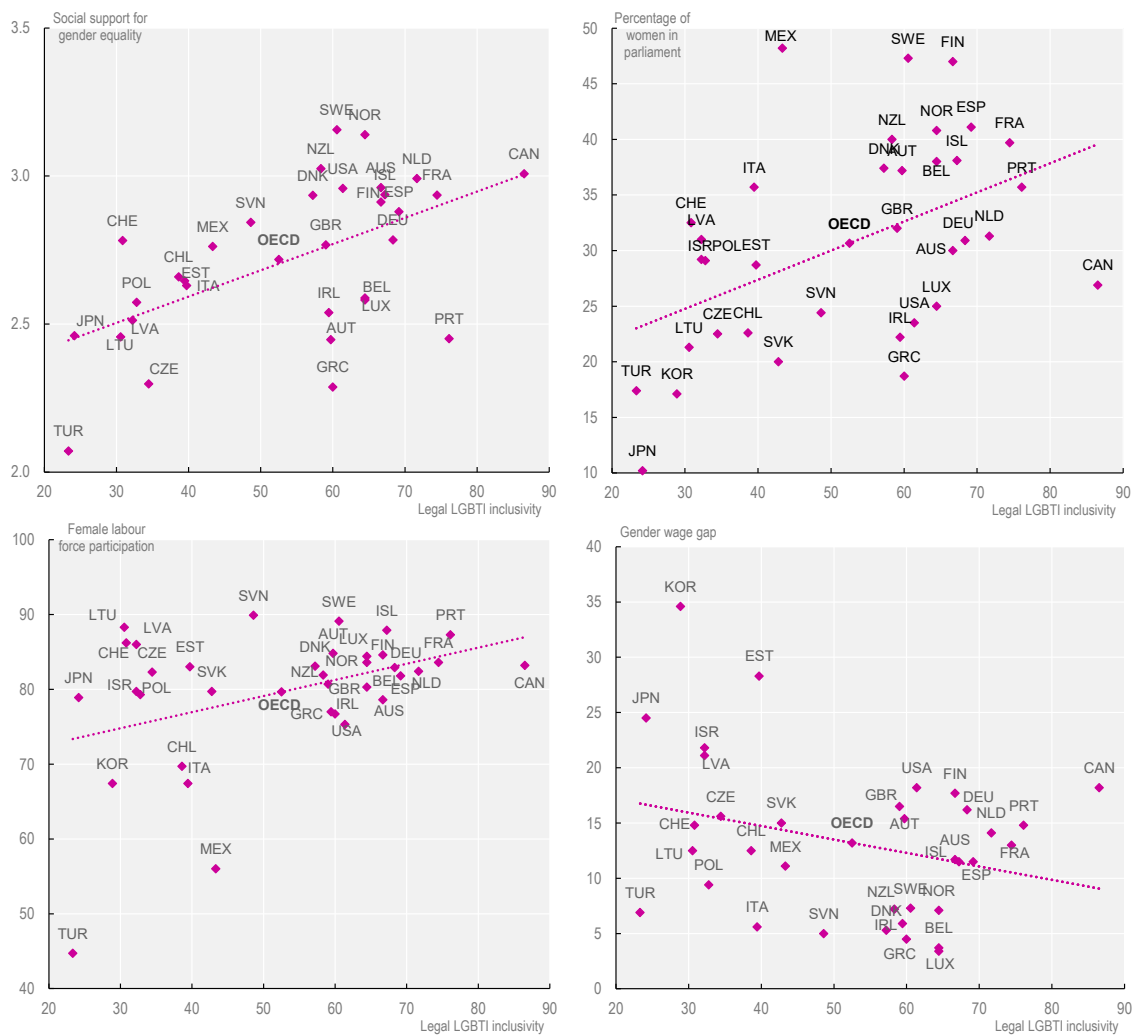
Both exclusion of LGBTI people and endorsement of traditional gender norms derive from the mistaken view that (i) individuals fall into only two distinct biological sexes at birth (male and female) that perfectly match their gender identity; (ii) men and women unequivocally feel sexual attraction to one another; (iii) within these couples, men and women fulfil biologically determined roles. One can therefore expect a strong association between legal LGBTI inclusivity and gender equality which moves away from traditional norms.

Figure 1.7 indeed reveals a significant positive relationship between legal LGBTI inclusivity and gender equality. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with:

- A one-point increase on a 1-to-4 scale measuring support for gender equality, from 2 to 3 (upper left panel of Figure 1.7);
- A more than two-fold increase in the share of women in parliament, from 15% to 34% (upper right panel of Figure 1.7);
- A one-third increase in female labour force participation, from 64% to 85% (lower left panel of Figure 1.7);
- A 30% decrease in the gender wage gap, from 22% to 15% (lower right panel of Figure 1.7).

## Figure 1.7. Legal LGBTI inclusivity is positively associated with gender equality

Relationship between legal LGBTI inclusivity, support for gender equality (upper left panel), percentage of women in parliament (upper right panel), female labour force participation (lower left panel) and gender wage gap (lower right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the upper left panel, social support for gender equality is an average of responses to the following three questions taken from the European Values Survey and World Values Survey: (i) *When jobs are scarce, men should have more right to a job than women* (=1 if strongly agree, =2 if agree, =3 if disagree, =4 if strongly disagree); (ii) *On the whole, men make better political leaders than women do* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree); (iii) *A university education is more important for a boy than for a girl* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree). Only survey rounds that occurred after 2001 are used. In the upper right panel, the percentage of women in parliament is computed as of 2019 and stems from the OECD Government at a Glance database. In the lower left panel, female labour force participation is computed as of 2018 for the 25-54 age group and stems from the OECD Employment database. In the lower right panel, gender wage gap is defined as the difference between male and female median wages divided by the male median wages (expressed in percentage), among full-time employees. It is computed as of 2017 or earlier and stems from the OECD Employment database.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on European Values Survey and World Values Survey, OECD Government at a Glance database, and OECD Employment database.

StatLink  <https://stat.link/xdzjue>

### 1.3.3. Legal LGBTI inclusivity and economic development

Economic development is conducive to education (Chevalier et al., 2013<sup>[6]</sup>) and, hence, legal LGBTI inclusivity. Education plays a major role in explaining differences in attitudes towards sexual and gender minorities. For instance, the score of individuals with a college education on a 1-to-10 scale measuring acceptance of homosexuality (6.1) is two points higher than that of individuals who have, at most, a lower-secondary education (4.1) (OECD, 2019<sup>[2]</sup>). This result may be in part due to education's correlation with complex reasoning that increases individuals' tolerance to nonconformity (Ohlander, Batalova and Treas, 2005<sup>[7]</sup>).

Legal LGBTI inclusivity also contributes to economic development by reducing the massive cost of anti-LGBTI discrimination (Carcillo and Valfort, 2018<sup>[8]</sup>). Anti-LGBTI discrimination reduces demand for labour of LGBTI people, which reduces their wages, their access to employment and confines sexual and gender minorities to less qualified positions than they might otherwise occupy. These negative consequences are magnified by reactions of the labour supply. Reduced wages undermine incentives to work. The discrimination-induced decrease in the demand for labour also reduces the productivity of LGBTI people who invest less in education and life-long learning because they anticipate low returns. This negative spiral results in production losses that in turn affect public finances. Lower production and wage levels reduce state revenue from income tax, corporation tax, and social security contributions. At the same time, discrimination in access to employment increases public expenditure due to unemployment benefits and social transfers to those who are discriminated against.

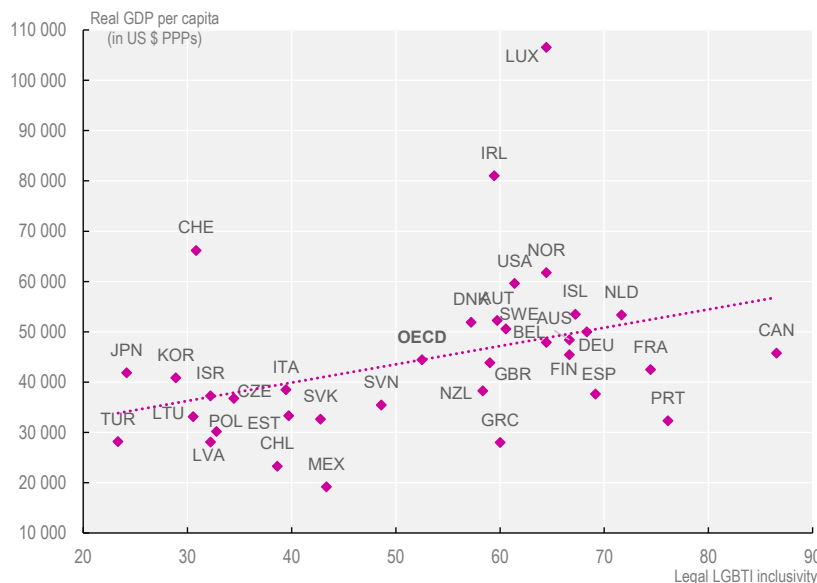
Yet, these immediate negative effects of discrimination represent only a fraction of the harmful spill-overs resulting from excluding LGBTI people from the labour market and the wider society. Notably, representative survey data point to widespread psychological distress among LGBTI individuals due to – at least partly – stigma (OECD, 2019<sup>[2]</sup>). Sexual and gender minorities mostly live in social environments that largely view heterosexuality and cisgender identity, i.e. congruence between sex at birth and gender identity, as the only way of being normal. LGBTI people therefore experience stress not undergone by heterosexual and cisgender individuals, the so-called minority stress (Meyer, 2003<sup>[9]</sup>). This stress has been shown to seriously hamper mental health, by generating anxiety, depression, suicide ideation, substance use and abuse. In the United States for instance, the reduction in the number of suicide attempts between LGB and heterosexual youth was substantially higher in states that adopted same-sex marriage before its legalisation by the Supreme Court in 2015, than in others – a trend that was not apparent before the implementation of LGB-inclusive policies. Overall, it is estimated that same-sex marriage policies caused a reduction by nearly 15% of suicide attempts among adolescents who self-identify as gay, lesbian or bisexual (Raifman et al., 2017<sup>[10]</sup>). Lower mental health in turn has the potential to impair LGBTI people's physical health by providing a fertile ground to other pathologies, such as cardiovascular diseases. Overall, the detrimental effect of discrimination on LGBTI people's mental health further contributes to eroding a country's human capital, as well as public finances through significant spending on social and health services in order to address the consequences of LGBTI people's marginalisation.

Consistent with these mechanisms, Figure 1.8 unveils a positive relationship between legal LGBTI inclusivity and economic development. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with an increase in real GDP per capita of approximately USD 3 200.



## Figure 1.8. Legal LGBTI inclusivity is positively associated with economic development

Relationship between legal LGBTI inclusivity and real GDP per capita (in USD PPPs)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. Real GDP per capita (in US \$ PPPs) is computed as of 2019 using 2015 as the reference year and stems from the OECD Main Economic Indicators database. Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019) and OECD Main Economic Indicators database.

StatLink  <https://stat.link/t7v0c5>

### 1.4. What else can be done beyond passing LGBTI-inclusive laws?

LGBTI-inclusive laws should be accompanied by a strong push to make LGBTI individuals better represented and more visible in national statistics (OECD, 2019<sub>[2]</sub>). Without data on sexual orientation, gender identity and sex characteristics, policy makers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information.

No census in OECD countries has ever asked questions on sexual orientation and/or gender identity to identify LGB and transgender people, and representative data on individuals' intersex status are absent. Yet, as of 2018, some countries have included a question allowing respondents to self-define their sexual orientation<sup>3</sup> and gender identity<sup>4</sup> (15 and 3, respectively), in at least one of their nationally representative surveys conducted by national statistical offices or other public institutions (OECD, 2019<sub>[2]</sub>). Moreover, improving data collection to identify trends and patterns of stigmatisation, discrimination and violence against LGBTI individuals is a key objective of 10 of the 13 ongoing nationwide action plans. Subject to Parliamentary approval, Great Britain (England, Scotland and Wales) should become the first OECD region in 2021 to include both a question on sexual orientation and a question on gender identity in its census. These initiatives constitute helpful precedents in order to disseminate good practices on how to best implement this data collection.

Analysis of good practices and nationwide action plans currently in force in one third of OECD countries highlights several additional measures to make significant progress towards LGBTI inclusion, beyond passing LGBTI-inclusive laws: (i) enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective; (ii) policies aimed at fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields; (iii) measures to create and maintain popular support for LGBTI inclusion.

### **1.4.1. Enforcing LGBTI-inclusive anti-discrimination, hate crime/hate speech and asylum laws**

Prohibiting discrimination on the grounds of actual or perceived sexual orientation, gender identity, and sex characteristics is an essential protection to ensure the human rights of LGBTI persons, as is the passage of LGBTI-inclusive hate crime/hate speech and asylum laws. However, true effectiveness can only be achieved through sound enforcement mechanisms.

#### *Enforcing LGBTI-inclusive anti-discrimination laws*

Non-reporting is the default response of people facing discrimination, irrespective of the protected ground considered (Equinet, 2012<sup>[11]</sup>). While more than one third (38%) of LGBT individuals in the EU affirmed in 2012 having personally felt discriminated against because of being L, G, B or T in the 12 months prior to the survey, only 10% declared that they (or anyone else) reported this incident of discrimination (European Union Agency for Fundamental Rights, 2014<sup>[12]</sup>). Unfortunately, the situation is not improving: the share of LGBTI individuals in the EU who stress having been discriminated against because of their sexual orientation, gender identity or sex characteristics in the past 12 months reaches 41% in 2019, while the proportion who reported this incident (11%) has remained virtually unchanged compared to 2012 (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>).

National human rights institutions have an important role to play to overcome under-reporting and, hence, ensure that the threat of sanction entrenched in antidiscrimination laws is credible (Equinet, 2012<sup>[11]</sup>; 2013<sup>[14]</sup>; UNDP, 2016<sup>[15]</sup>; ECRI and Council of Europe, 2017<sup>[16]</sup>). Maintaining well-designed interactive websites encouraging users to actively engage with their content as it is done by the Equality Commission for Northern Ireland is a critical step towards enforcing LGBTI-inclusive anti-discrimination laws. Such websites allow:

- Delivering clear information about who and what is protected by antidiscrimination laws;
- Providing users with concrete guidance on how to compile the discrimination case;
- Enabling victims to submit a claim even when they are reluctant to personally sue their discriminators so that the national human rights institution may bring the case in its own name.

These resources to combat under-reporting of discrimination should be accompanied by efforts to consistently remind people of their existence, accessibility and effectiveness (Equinet, 2015<sup>[17]</sup>; 2017<sup>[18]</sup>). Specific attention is needed to get the message through to groups at risk of discrimination, by building and maintaining collaborative relationships with “connectors” who are trusted as messengers by these groups, including LGBTI organisations and networks. Regularly showcasing the national human rights institution’s commitment is also essential to strengthening a trust relationship with sexual and gender minorities. This objective can be achieved in several ways, including attending pride events – as it is the case in Greece where the Ombudsman has been participating in the Athens Pride every year since 2007 (Equinet, 2015<sup>[17]</sup>). Finally, the national human rights institution should evaluate its communication strategy and the perception of its work among key stakeholders, following the example from the Office of the Ombudsman for Equality in Finland.

#### *Enforcing LGBTI-inclusive hate crime and hate speech laws*

Governments must take action to legally recognise sexual orientation, gender identity and sex characteristics as grounds for hate crime and hate speech. But successful implementation of LGBTI-inclusive hate crime and hate speech laws is critical. Achieving this objective entails (i) training police officers on properly dealing with hate crime targeting LGBTI people and (ii) effectively combating hate speech online.

### **Training police officers on properly dealing with hate crime targeting LGBTI people**

Failure to appropriately prosecute crimes motivated by hatred against LGBTI people creates a sense of impunity among perpetrators and can result in increasing levels of violence against sexual and gender minorities. Training police officers to properly handle hate crime incidents can help prevent this troubling cycle from emerging. The police are at the frontline of the criminal justice system and the first point of contact for many victims. A fair application of national hate crime laws is out of reach if they are not equipped with the skills to take a detailed victim statement and to identify when a criminal offence is a hate crime (ILGA Europe, 2008<sup>[19]</sup>; OSCE, 2009<sup>[20]</sup>; 2014<sup>[21]</sup>; CoE, 2017<sup>[22]</sup>; European Commission, 2017<sup>[23]</sup>; European Union Agency for Fundamental Rights, 2018<sup>[24]</sup>). Training police officers is all the more important since their presumed reluctance and/or incapacity to deal with violence targeted at LGBTI people is often the main reason why LGBTI people refuse to report abuse (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>).

To further improve the reporting of hate crimes by LGBTI people, this training could be complemented by creating close partnerships between the police and civil society organisations, as it is done by the Metropolitan Police Service responsible for law enforcement in the 32 London boroughs. Civil society organisations are often the first entities contacted by victims of hate crime and can therefore become invaluable intermediaries between the police and victims by increasing the chances of victims cooperating with the investigation and remaining engaged in the criminal justice process.

### **Effectively combating hate speech online**

To fully deter hate crime, governments should also prohibit severe forms of hate speech. Passing LGBTI-inclusive hate speech laws is a critical first step in that direction. But this step should be complemented by strategies to tackle the most challenging forms of hate speech, such as online hate speech (UNESCO, 2015<sup>[25]</sup>).

One option is for international and/or regional stakeholders to set up standards with social media companies, as illustrated by the Code of Conduct agreement these companies and the European Union entered into (European Commission, 2016<sup>[26]</sup>). To push social media companies to regulate content more forcefully and to crack down on hate speech more quickly, some countries have passed (Germany) or are considering passing (Australia, France, or New Zealand) laws that impose obligations on private companies to regulate hate speech online and provide high fines for non-compliance.

Since delegating censorship measures to private entities entails a risk of illegitimate restrictions on freedom of expression (OHCHR, 2017<sup>[27]</sup>), a more decentralised approach consists in fostering the creation of organised counter-speech groups. Such groups coordinate their efforts to respond to hateful comments online (e.g. by providing new piece of information to debunk hateful comment). In Germany, their action has proven to help dissuade internet users from engaging into hate speech (Sonntag, 2019<sup>[28]</sup>).

### *Enforcing LGBTI-inclusive asylum laws*

Recognising persecution based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum is governments' responsibility. Yet, processing LGBTI asylum claims remains a challenge. Over the years, stakeholders have issued thorough guidelines (UNHCR, 2010<sup>[29]</sup>; 2011<sup>[30]</sup>; 2012<sup>[31]</sup>; 2015<sup>[32]</sup>; COC Nederland, 2011<sup>[33]</sup>; ILGA Europe, 2014<sup>[34]</sup>). Milestone documents emphasise the need for governments (i) to help asylum officials (e.g. interviewers, interpreters or adjudicators) determine refugee status and (ii) to ensure safety of LGBTI people in asylum detention and reception facilities. To increase their effectiveness, these actions could be complemented by resettlement policies directed at LGBTI individuals who were granted refugee status so that they successfully integrate in their host society, as it is the case in Canada or Norway.

### Helping asylum officials determine refugee status

Empowering asylum officials to assess the credibility of LGBTI asylum applicants implies that they easily access precise, up-to-date and reliable information on the status of LGBTI persons in the country of origin. Insights on this status can be derived from reports of human rights organisations, the United Nations and local LGBTI organisations (COC Nederland, 2011<sup>[33]</sup>). In this process, asylum authorities should be reminded that applicants are entitled to live as who they are, including in their country of origin and, hence, that the “discretion” argument does not apply: they should not reject the applications of LGBTI asylum seekers on the basis that they could avoid persecution by concealing their sexual orientation, gender identity or sex characteristics, as ruled in 2013 by the Court of Justice of the European Union in the case of *Minister voor Immigratie en Asiel v. X and Y and Z v. Minister voor Immigratie en Asiel*.

### Ensuring safety of LGBTI people in asylum detention and reception facilities

Ensuring safety of LGBTI people in asylum detention and reception facilities equally constitutes a major challenge. Although international human rights bodies insist that placing migrants and asylum seekers in detention should be seen as a last resort, the use of detention of migrants remains a worldwide and growing practice (UN Working Group on Arbitrary Detention, 2018<sup>[35]</sup>). In these settings, LGBTI persons face unique risks and challenges: they typically occupy the bottom of the informal hierarchy that characterises places of incarceration and are therefore disproportionately exposed to violence (UNHCR, 2012<sup>[36]</sup>). Studies report that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates (13 times more likely for a transgender person) (UN Committee against Torture, 2016<sup>[37]</sup>). Similarly, reception centres are all too often characterised by significant hostility against LGBTI residents, mainly coming from their countrymen/-women (ILGA Europe, 2014<sup>[34]</sup>).

To protect LGBTI persons in asylum detention and reception facilities, special consideration should be devoted to their place of accommodation. LGBTI asylum seekers typically fled alone and they have neither the support of family members nor a network of fellow expatriates (ILGA Europe, 2014<sup>[34]</sup>). To ensure their safety, it is important to create spaces where they can live without fearing retaliation. A good practice in this regard consists of transferring them to smaller reception facilities, and/or to centres with fewer countrymen/-women (ILGA Europe, 2014<sup>[34]</sup>). In Austria, female transgender asylum seekers are mostly placed in facilities devoted to unaccompanied women.

#### **1.4.2. Fostering a culture of equal treatment in education, employment and health care**

It is unlikely that reducing under-reporting of discrimination alone will be enough to eliminate anti-LGBTI discrimination. To effectively combat this discrimination, it is essential to concomitantly create a culture of equal treatment by educating people to counter and control their bias against LGBTI individuals. Indeed, consciously or not, people tend to be biased *in favour* of their in-group (the social group with which they identify as being a member) and/or to be biased *against* their out-group (the social group with which they do not identify) (Kahneman, 2013<sup>[38]</sup>). This bias leads them to judge positively, even before they get to know them, people who are similar to them, and to “prejudge” negatively the others. This bias also largely accounts for stereotypes’ inaccuracy. Individuals tend to overestimate the weaknesses of dissimilar others and to underestimate their strengths, while they are prone to the opposite in face of similar others. Overall, in-group and out-group bias contributes to minority groups, LGBTI people included, being discriminated against by the majority.

Countering bias against sexual and gender minorities is particularly essential in the fields of education, employment and health care. Although these fields are viewed by the International Bill of Human Rights as critical for individuals to flourish, they are fraught with discrimination against LGBTI people.

## *Promoting LGBTI equality in education*

LGBTI-phobic bullying at school is a worldwide problem (UNESCO, 2016<sup>[39]</sup>). Across the EU, nearly 60% of LGBTI respondents declare in 2019 they have hidden being LGBTI at school, and 4 in 10 report having always or often experienced negative comments or conduct in the school setting because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>). Yet, these numbers underestimate the actual prevalence of LGBTI-phobic bullying. Evidence shows that pupils do not necessarily have to be lesbian, gay, bisexual, transgender or intersex to be bullied: not fitting in with the gender expectations of their peers – boys judged as being not masculine enough, girls judged as being not feminine enough – is often sufficient for them to experience rejection. Hostile school settings are detrimental to the mental and physical health of LGBTI youth and negatively affect educational attainment including through lower participation in class or school activities, poorer academic performance and lower rates of attendance, or dropping out of school altogether (OECD, 2019<sup>[2]</sup>; Sansone, 2019<sup>[40]</sup>). Ultimately, school environments where children and youth are subject to LGBTI-phobic behaviour are factors that contribute to high rates of social exclusion and lack of higher education and employment prospects, adversely impacting LGBTI persons and society at large.

There are three key policy options to prevent and tackle bullying on account of sexual orientation, gender identity and sex characteristics: (i) introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject; (ii) guiding school staff on implementing an LGBTI-inclusive curriculum; (iii) adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur (UNESCO, 2012<sup>[41]</sup>; 2016<sup>[39]</sup>; GLSEN, 2016<sup>[42]</sup>; CoE, 2018<sup>[43]</sup>; IGLYO, 2018<sup>[44]</sup>; ILGA Europe and OII Europe, 2019<sup>[45]</sup>).

While implementing these policies, it is critical that parents understand why the school is preventing and tackling LGBTI-phobic bullying, to avoid backlash. Schools should clarify that their efforts aim to look after the welfare and safety of all young people in the school, not to talk about sex or try to turn children gay – two pervasive worries among parents. It is also important to provide parents with the option to discuss their concerns with senior leadership – a way to reassure them that their concerns are taken seriously, but also to send a strong message that the commitment to prevent and tackle LGBTI-phobic bullying extends across the school (Stonewall, 2015<sup>[46]</sup>).

### **Introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject**

Introducing a school subject that promotes the inclusion of LGBTI identities, among other groups at risk of discrimination, constitutes a crucial front in the battle for LGBTI equality. Early interventions should be given special attention while ensuring of course that the subject's content is age-appropriate: values and attitudes are formed early and are likely to be highly resistant to change in later life. This LGBTI-inclusive subject should ideally be mandatory, as will be the case in England starting from September 2020. It should also be grounded in a set of clear objectives so that school staff understand expectations. Finally, actual implementation of this curriculum should be closely monitored by school inspectors to ensure enforcement.

### **Guiding school staff on implementing an LGBTI-inclusive curriculum**

School staff should also receive help on how to teach this subject, especially at early stages. This ambition implies giving teachers access to detailed lesson plans, as it is done by the “No Outsiders” project directed at primary schools in and outside the United Kingdom.

Teachers should also be given insights on how to embed LGBTI families, people and themes throughout the curriculum. Confining the mention of LGBTI issues to a specific area of the curriculum entails a risk that LGBTI issues be viewed as something marginal or even something to hide or be ashamed of.

Finally, teachers should be given assistance in managing parental concerns about the teaching of LGBTI content, especially in primary schools. Setting up partnerships with LGBTI organisations and faith schools having already shown best practice in combating LGBTI-phobic bullying constitutes a promising approach.

### **Adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur**

A whole-school approach is also needed to deal with LGBTI-phobic language and behaviour every time they occur. Such language is widespread but often goes unchallenged by school staff, firstly because they lack the confidence to do but also because they consider this language to just be harmless banter (Stonewall, 2017<sup>[47]</sup>). Creating a zero-tolerance school policy that clearly states LGBTI-phobic language and behaviour are wrong and will not be tolerated from any member of the school community – students, staff or parents and carers – is often viewed as the best way to start addressing the problem.

Alongside adopting a sound school policy, it is important to train school staff on why and how LGBTI-phobic language should be challenged – even when they consider the bully did not mean to be LGBTI-phobic. For instance, Scotland plans to make such training compulsory in a near future in the framework of both Initial Teacher Education and Career Long Professional Learning (LGBTI Inclusive Education Working Group, 2018<sup>[48]</sup>).

An alternative to school staff training is for schools to partner with LGBTI NGOs that directly intervene among pupils to discuss about their representations of sexual and gender minorities, challenge those who are prejudiced and stereotypical, and create awareness about the harmful consequences of LGBTI-phobic bullying and activate empathy. In France for instance, the Ministry of Education has accredited several civil society organisations (e.g. SOS homophobie) to complement public education.

### *Promoting LGBTI equality in employment*

Survey and experimental data demonstrate the pervasiveness of discrimination against LGBTI job seekers and employees. Across the EU, more than one fourth of LGBTI respondents in 2019 declare they hide being LGBTI at work, and more than one fifth report having personally felt discriminated against in the labour market in the 12 months prior to the survey because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020<sup>[13]</sup>). Comparison of labour market outcomes of LGBT and non-LGBT adults based on representative survey data provides a consistent picture. They reveal that LGBT people are 7% less likely to be employed than non-LGBT people and their labour earnings are 4% lower (OECD, 2019<sup>[2]</sup>).<sup>5</sup> Labour market discrimination can also be measured by comparing the rate at which two fictitious candidates are invited to a job interview: one that employers perceive as LGBT and one that employers perceive as non-LGBT. Such experiments indicate that homosexual applicants are, on average, 1.5 times less likely to be invited when their sexual orientation is conveyed through volunteer work in a gay and lesbian organisation. Experimental data also reveal significant discrimination against transgender job applicants (OECD, 2019<sup>[2]</sup>).

Creating a culture of equal treatment in employment implies that private and public employers adopt a comprehensive workplace equality policy with an explicit LGBTI-specific component. A first step is to publicise employers' commitment to recruit staff and extend to each individual the same benefits, salaries, opportunities for training or promotion regardless of sexual orientation, gender identity or sex characteristics. A second – more ambitious – step, is to undertake a set of actions to ensure non-discrimination, chief of which staff training, human resource management strategies that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy (ILO/UNAIDS/UNDP, 2015<sup>[49]</sup>; European Commission, 2016<sup>[50]</sup>; OHCHR, 2017<sup>[51]</sup>; TGEU, 2017<sup>[52]</sup>; ILGA Europe and OII Europe, 2019<sup>[45]</sup>).

### **Adopting a comprehensive workplace equality policy with an explicit LGBTI-specific component**

This objective notably entails training staff on being open and supportive of LGBT inclusion at the workplace. Following the good practice implemented by several large companies (Sodexo, 2012<sup>[53]</sup>), a starting point is disseminating a guide to familiarise the staff with what being LGBTI means, to explain why combating discrimination is a priority and to promote LGBTI inclusion in everyday interactions at the workplace. This guide can then be complemented by an advanced training, notably for managers and people in charge of human resources, to learn how to counter their conscious and unconscious bias against specific groups. Rigorous evaluation suggests that, in order to effectively combat biases, such training should include participants to take implicit association tests and learn techniques to foster empathy (Devine et al., 2012<sup>[54]</sup>).

Firms could also invest in objective human resources practices (Carcillo and Valfort, 2018<sup>[8]</sup>). Special attention should be devoted to the interview stage: this is when recruiters can infer the sexual orientation, gender identity and/or sex characteristics of job candidates, notably based on their physical appearance. To help objectivise the interview process, its structure, questions, interviewers should be the same from one candidate to another. Without a consistent protocol, recruiters tend to let their stereotypes become self-fulfilling: when their bias is positive, they are more likely to begin the interview with the candidates' strengths, this increasing the chances of excelling, and *vice versa* (Bohnet, 2016<sup>[55]</sup>).

### **Incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks**

Employers have an economic interest in creating the conditions for their workplace to be inclusive of LGBTI individuals (OHCHR, 2017<sup>[51]</sup>). Anti-LGBTI discrimination may lead to market share losses: in 2018, the global spending power of the LGBT consumer segment was estimated at USD 3.6 trillion per annum, excluding the purchasing power of friends and families of LGBT individuals that make up the ally community.<sup>6</sup> Further, anti-LGBTI discrimination undermines productivity through several channels, including worse-quality hires (passing over talented individuals in the recruitment process), weaker employee engagement, lower employee retention, and lost diversity dividend – a growing body of research reveals that a more diverse employee pool tends to boost the company's intellectual potential.

However, establishing a workplace equality policy also entails costs. In this context, it is important to provide employers with additional incentives to embrace LGBTI inclusion by allowing them to showcase their achievements and, hence, improve their reputation and attractiveness among job candidates, employees, customers and suppliers.

To date, several not-for-profit organisations have developed standards to rate employers' implementation of LGBTI-inclusive workplace equality policies. There are ways for governments to improve the outreach and take-up of these indices among national employers. First, they could sponsor the creation of standards at the national level in countries where these standards haven't emerged yet, and publicly support these standards in countries where they already exist. Moreover, governments could exemplify and generate peer pressure by encouraging the public sector to participate in the benchmarking process, as is the case in Australia and the United Kingdom.

### *Promoting LGBTI equality in health care*

Legally prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics in health care, barring conversion therapies on LGBTI minors, banning medical mandates for legal gender recognition, or postponing medically unnecessary sex-normalising treatment or surgery on intersex babies, are all actions that can contribute to ingraining a culture of equal treatment in health care settings.

But more can be done. LGBTI people indeed face specific health needs and risks that must be properly addressed by health care staff. Focus groups conducted among LGBTI participants across the EU reveal that LGBTI people identify a lack of knowledge on the part of health care staff around their health issues. This situation is compounded by the fact that a large share of LGBTI people do not disclose their sexual orientation, gender identity and/or sex characteristics in health care settings for fear of discrimination (Health4LGBTI, 2017<sup>[56]</sup>).

To remove these barriers, authorities could include compulsory modules in the initial education and career-long learning of health care staff, that will teach them about the specific health needs of LGBTI people, and how to approach LGBTI people in an inclusive way (Gay and Lesbian Medical Association, 2006<sup>[57]</sup>; 2010<sup>[58]</sup>; Health4LGBTI, 2018<sup>[59]</sup>). Such training has proven to be successful in an EU-funded impact evaluation conducted in Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom (Health4LGBTI, 2018<sup>[60]</sup>; Donisi et al., 2019<sup>[61]</sup>).

### **Increasing knowledge on LGBTI people's health needs**

LGBTI people are at greater risk of mental health disorders. The general tendency of health systems not to prioritise mental health disproportionately affects the LGBTI population. It is critical that health care staff be informed of this reality to better address LGBTI people's health needs.

Lower mental health is only one of the many health inequalities faced by LGBTI individuals about which health care staff should be informed (Health4LGBTI, 2017<sup>[62]</sup>):

- Lesbian and bisexual women are less likely to attend cervical screening;
- Gay and bisexual men have a higher anal cancer rate and are at greater risk of contracting a sexually transmitted infections such as syphilis and human immunodeficiency virus;
- Transgender people are also at greater risk of sexually transmitted infections, in a context where stigma both within and outside the family compels some to engage in sex work;
- Intersex people who were subject to unconsented sex normalising surgery or treatment in their early life are at greater risk of long term conditions.

### **Increasing knowledge on how to approach LGBTI people in an inclusive way**

When entering health care facilities, many LGBTI people report looking for clues that signal whether it is an LGBTI-inclusive setting. According to LGBTI patients, language used in health care settings causes discomfort and offense because it assumes all patients are heterosexual, cisgender and non-intersex, and is at times judgmental (Health4LGBTI, 2018<sup>[59]</sup>) To encourage LGBTI people to access health care and be open to disclose their identity where appropriate, it is essential that health care staff be trained on providing them with a welcoming environment.

Compliance with these guidelines is especially important when health care staff interact with elderly LGBTI people. This group has greater needs for health care and is much less likely to be out than the younger generation, having spent lives marked by histories of greater marginalisation, discrimination and even persecution. In this context, the priority could be put on training staff working with seniors, such as long-term care facilities. This strategy is all the more critical since older LGBTI people are more likely to reside in these settings: they are less often provided home care by a partner and/or children (MAP and SAGE, 2017<sup>[63]</sup>).

Since older LGBTI people living in long-term care facilities face frequent anti-social behaviours from other residents – leading many to stay in or retreat back to the closet (SAGE, 2018<sup>[64]</sup>) – an alternative strategy consists in supporting the development of co-housing inclusive of LGBTI seniors, as it is done for instance in France, Germany and Spain.



### **1.4.3. Creating and maintaining popular support for LGBTI inclusion**

Social acceptance of LGBTI people has improved but remains limited in OECD countries (OECD, 2019<sup>[2]</sup>). Popular support for LGBTI inclusion is critical for countries to pass the legal provisions defined and analysed in Section 1.1 and Section 1.2, and avoid backlash against those already in force. Creating and maintaining this support first entails implementing well-designed awareness-raising activities among the general public. It is also important that government and public officials behave, collectively and individually, in a way that fosters equal treatment of LGBTI individuals.

#### *Implementing well-designed awareness-raising activities among the general public*

Effectively communicating human rights is challenging. Comprehensive guidelines published by key stakeholders identify a set of conditions to ensure that campaigns promoting LGBTI equality resonate with the general public and, hence, positively impact individual attitudes and behaviours (Equinet and PIRC, 2017<sup>[65]</sup>; ILGA-Europe and PIRC, 2017<sup>[66]</sup>; European Union Agency for Fundamental Rights, 2018<sup>[67]</sup>)

#### **Telling a human story**

To promote LGBTI equality, any communication strategy should seek to tell human stories about LGBTI individuals. Rather than statistics on the pervasiveness of stigmatisation, discrimination and violence endured by LGBTI individuals, advocacy and awareness-raising campaigns should rely on personal testimonies and anecdotes that provide a human face to the problem. This strategy was notably implemented by the European Union's "We all share the same dreams" initiative that was launched in 2016 to increase awareness and acceptance of LGBTI persons.

#### **Identifying issues of broader interest to the general public**

It is critical that the campaign does not focus on topics viewed as too specific to sexual and gender minorities but concentrate instead on issues of broader interest to the general public. A successful communication strategy should go beyond appealing only to people's compassion for minorities. This objective entails identifying the values underlying LGBTI rights that matter for non-LGBTI people, that they hold dear in their everyday life and are willing to fight for. These are the lessons learned by the Freedom to Marry campaign in the United States where numerous popular votes on marriage equality were lost until the organisation began to use "values based campaigning" in 2010 (Freedom to Marry, 2016<sup>[68]</sup>).

#### **Taking the public on a journey**

A well-designed campaign to promote LGBTI equality should take the public on a journey by showing them how other people's thinking evolved. It is important to include among messengers individuals to whom the public can relate. People telling stories should not always be role models, experts, activists and survivors of abuses, but everyday people just like the public who have gone on a journey that the audience can also take. Finding "unlikely" messengers, such as faith leaders, is also critical because these messengers are viewed as "permission givers" by the undecided. This capacity to build alliances with a broad range of messengers to take the public on a journey was one key ingredient of the successful "Yes Equality" campaign in Ireland (Council of Europe, 2017<sup>[69]</sup>).

#### *Setting an example through government and public authorities*

Building and sustaining popular support for LGBTI inclusion also requires that government and public authorities lead through exemplary official and individual conduct.

### **Exemplifying through official conduct**

Reparation is an important tool that government and public authorities can collectively use to acknowledge past state-sponsored discrimination, oppression and violence against LGBTI people. This official strategy is conducive to beginning a healing process, while also familiarising and sensitising the public about historical injustices suffered by LGBTI persons at the hands of the state, to avoid repetition of those acts. Reparation policies are gaining ground in countries at the forefront of the battle for LGBTI inclusion such as Canada, Germany, the Netherlands or the United Kingdom.

Moreover, government and public officials representing countries that have made strides to protect and promote the inclusion of LGBTI rights in their home countries are in a position to positively advocate for the expansion of those rights in other countries through international relations and foreign diplomacy. For instance, US diplomatic officials have shown commitment to denounce human rights violations based on sexual orientation following the US global initiative to decriminalise homosexuality that was launched early 2019.

### **Exemplifying through individual conduct**

In addition to advocating for legal advancements, members of parliament play a crucial role in fostering inclusion, acceptance and support for LGBTI person through their individual conduct, as illustrated by the Global LGBT+ Caucus, an international network of parliamentarians and elected representatives launched in 2019 aiming to tackle discrimination against LGBT+ people. Effectively intervening and demonstrating leadership to condemn discrimination and promote the human rights of LGBTI persons within parliaments and constituencies can serve to deter some from engaging in negative conduct against LGBTI persons, while emboldening others to positively defend their rights (European Union Agency for Fundamental Rights, 2016<sup>[70]</sup>).

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## Notes

<sup>1</sup> See [oe.cd/lgbti](https://www.oecd.org/lgbti/).

<sup>2</sup> These 12 member countries are Australia, Chile, Denmark, Finland, France, Iceland, Ireland, Netherlands, Norway, Sweden, Switzerland, and the United States.

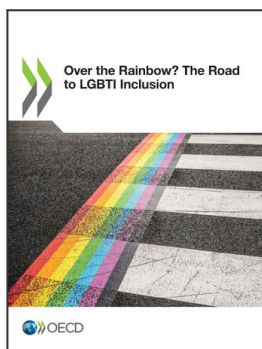
<sup>3</sup> These countries are Australia, Canada, Chile, Denmark, France, Germany, Iceland, Ireland, Italy, Mexico, New Zealand, Norway, Sweden, the United Kingdom and the United States.

<sup>4</sup> These countries are Chile, Denmark and the United States.

<sup>5</sup> These estimates presumably constitute a lower bound of the actual penalty faced by sexual and gender minorities since LGBT people who accept to disclose their sexual orientation and gender identity in surveys tend to be economically advantaged.

<sup>6</sup> See [http://www.lgbt-capital.com/index.php?menu\\_id=2](http://www.lgbt-capital.com/index.php?menu_id=2).





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