

Protecting the Rights of Transgender and Gender-Diverse Employees in Australian Workplaces

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Introduction:

In recent years, there has been a growing awareness and recognition of the challenges faced by transgender and gender-diverse (TGD) individuals in various aspects of life, including the Australian workplace. Despite efforts to promote diversity and inclusion, TGD employees continue encountering systemic barriers, discrimination, and violations of their fundamental human rights throughout the employee lifecycle. This submission aims to shed light on the difficult and often treacherous experiences faced by TGD individuals in Australian workplaces, highlighting the need for comprehensive measures to protect their rights and ensure their full inclusion and equal treatment.

As a non-binary genderqueer researcher, I had the privilege to consult with a diverse group of TGD people from all walks of life, during my PhD thesis, exploring the work experiences and career development of TGD individuals concerning organisational structures and workplace cultures. Since then, I have published a series of papers to raise awareness regarding the work experiences of TGD people and how they impact their career development. I presented these findings at national and international conferences and translated the results for industry organisations like the Career Development Association Australia or media outlets like BroadAgenda. Over the years, I kept a close eye on the emerging literature and research discussing TGD employee experiences. My research and related publications will inform the following discussion concerning protecting the rights of TGD people in Australian workplaces along the employee life cycle. The employee life cycle will consist of attraction, recruitment, and selection; onboarding and induction; learning and development; performance management; retention; and departure.

Attraction, Recruitment, and Selection:

The journey of a TGD individual in the workplace often begins with the attraction, recruitment, and selection processes. While many organisations claim to be inclusive and promote a diverse workforce, the reality on the ground may not always align with these stated values.

The organisational or employer branding represents a welcoming working environment based on corporate websites including images of diverse groups or social media appearances calling for inclusion and equity (Maji et al., 2023). TGD candidates can get a glimpse of the organisational reality during the application, recruitment and selection process. If they are fortunate they are confronted with the harsh reality of a discriminatory and exclusionary workplace operating based on gender binary or cisnormative value systems. They are lucky because they face discriminatory, exclusive and unsafe employer behaviour, organisational structures and workplace culture before committing further to employment.

Three difficulties throughout the recruitment and selection process shall be highlighted, namely, the gender binary data collection, stigmatisation against people identifying as TGD, and the dilemma concerning a forced outing to present relevant evidence for gaining the job. TGD applicants frequently encounter hurdles due to binary human resource information management systems or documentation requirements that fail to accommodate their gender identity (Ladwig, 2023a). The requirement of selecting a heteronormative title, a binary gender or a sex marker limits TGD individuals' responses or even forces them to misgender themselves. Additionally, unconscious biases among selection panels can lead to discrimination against TGD applicants, denying them fair employment opportunities. Stigmatisation against TGD applicants is present during different stages of the selection process and potentially deselects diverse applicants before they even can make an interview appearance (Mizock et al., 2018). Moreover, the fear of being forced to "out" themselves or face deadnaming (the use of a person's birth name after they affirmed their gender by changing their name that expresses the person's identity) during the application process can create a significant barrier for TGD individuals. The change of careers, occupations or jobs offers the opportunity of a fresh start to affirm a TGD person's gender. However, previous certificates or referee reports with a deadname or incorrect gender are still relevant to demonstrate the applicant's qualification to make them eligible for employment but simultaneously outing the person as TGD (Hennekam and Köllen, 2023). This risk and the lack of transparency regarding inclusive policies can discourage TGD applicants from pursuing employment opportunities, ultimately depriving organisations of valuable talent and diverse perspectives.

Onboarding and Induction:

Even after securing employment, TGD individuals face multiple challenges during the onboarding and induction process. Incorrect introductions to team members, including using the deadname or incorrect pronouns, can create an unwelcoming and disrespectful environment from the start. As a new employee, it is difficult to correct such mistakes due to

existing power structures between managers and team members or uncertainty of existing work culture including allyship from colleagues (Fletcher and Swierczynski, 2023).

Induction requires the new employee to familiarise themselves with the code of conduct, enterprise agreement, policies and procedures. A lack of transparency or inclusivity in organisational policies regarding leave, caring arrangements, victim/survivors of domestic and family violence, and gender affirmation can leave TGD employees feeling unsupported and vulnerable (Ladwig, 2021b). The limitation of inclusive organisational regulation for TGD employees becomes clear as familiarising yourself with organisational policies and procedures is part of most inductions.

Another concern is the level of LGBTQIA+ education and allyship regarding TGD employees in the workplace. Uninformed or ignorant team environments, often resulting from a lack of organisational commitment to diversity, equity, and inclusion education, can further exacerbate the challenges faced by TGD employees. Without proper training and enforcement of anti-discrimination laws and policies (Hutchinson et al., 2024), TGD individuals may find themselves navigating hostile work environments that fail to protect their rights and well-being.

Learning and Development:

Onboarding and induction are the first milestones of ongoing learning development in the workplace for all employees to demonstrate the abilities of a life-long learner. However, learning and development opportunities available to TGD employees can present further significant challenges. Often, learning and training opportunities are outsourced to external educational providers who are invited into the organisation. Hence, working with biased or miseducated external training providers can perpetuate harmful stereotypes and contribute to an unwelcoming environment. External providers are not obliged to comply with the organisational values and culture and therefore, present a risk of discriminating or disadvantaging TGD participants throughout the learning experience (Ladwig, 2022). Human resource professionals employing external trainers should evaluate if the provider aligns with the organisational values.

Learning and development opportunities are not limited to training and education but include other opportunities to develop capabilities and learn based on stretch assignments. Additionally, development opportunities that involve travel to countries with a lack of human rights for TGD individuals can pose significant risks to the safety and well-being of the TGD employee. Often, managers or supervisors do not consider the stress, danger and risk of international travel for TGD employees (Paisley and Tayar, 2016).

Tokenistic representation of diversity, rather than authentic development opportunities, can further marginalise TGD employees and undermine their professional growth and advancement within the organisation. Instead of providing the individual with opportunities that are relevant to their professional development or career aspiration, TGD delegates are appointed to represent the diversity and inclusion of the organisation as a promotion exercise (Pitcher, 2017). The opportunity of a TGD employee to develop stakeholder engagement skills might be a cover for sending the person to important customers to actually represent the diversity of an institution even if this person is the only TGD individual in an otherwise heteronormative and cisnormative organisation.

Performance Management:

Effective performance management is essential for ensuring a fair and equitable workplace. However, TGD employees often face obstacles in this area due to a lack of management knowledge regarding diversity, equity, and inclusion. Toxic work cultures that solely benefit individuals conforming to a heteronormative gender binary or cisnormative standards can lead to the silencing of marginalised voices and the perpetuation of minority stress (Goldberg et al., 2021; Ladwig, 2021b). Performance management in recent years has been developed into regular conversations that should be built on trust. If the relationship between managers, who conduct the performance reviews and conversations, and TGD employees is coloured by gender binarism and transphobic stigmatisation, a constructive conversation will be difficult to achieve. Furthermore, TGD employees might try to comply with the heteronormative and cisnormative standards of an organisation to avoid discrimination and exclusion (Ladwig, 2023a). This leads to self-editing in the workplace which might take up significant brain power that otherwise should have been spent on the task performance (Ladwig, 2021a).

Adequate performance is dependently measured on numerous influences, for instance, customer satisfaction. Engaging with difficult customers can be stressful at best of times but is further distressing if customers attack a person's identity and gender expression. Moreover, the lack of support when experiencing harassment and discrimination from customers or other stakeholders can create an unsafe and unsupportive environment, hindering TGD employees' ability to contribute fully and perform at their best (Hadjisolomou, 2021). Such experiences have a tremendous negative impact on a TGD person's well-being. Consequently, employers need to decide what is more important - the employment well-being of their TGD organisational members or the customer satisfaction of a discriminatory client harassing the employee.

Retention:

Retaining TGD employees is a significant challenge for organisations due to various factors. TGD individuals are often overlooked for stretch assignments or promotions, contributing to the perpetuation of the gender pay gap beyond the binary (Blatt, 2022). Dismantling the most recent Workplace Equality Gender Agency report showcases that trans women and non-binary employees receive significantly lower pay in comparison to the cisnormative equivalent. Additionally, the expectation for TGD employees to work harder or be excessively professional to avoid stigmatisation can create an unsustainable and discriminatory work environment (Ladwig, 2021a). In a heteronormative work environment, TGD employees experience daily discrimination or microaggressions which contribute to a high level of minority stress and consequently, force TGD people to leave such toxic workplaces (Hennekam and Köllen, 2023).

Departure:

When TGD employees decide to leave an organisation for the reasons named above, they may face additional challenges in finding new employment. Limited opportunities for referrals due to gender affirmation or unhealthy/unsafe work relationships can hinder their future career prospects (Ladwig, 2023b). Referrals might include a person's deadname or the relationship between manager and employee has been so unhealthy that a referral would do more damage than good.

The avoidance of exit interviews by TGD individuals, driven by the fear of being re-traumatised, can deprive organisations of valuable feedback and insights necessary for improving their policies and practices. Exit interviews provide a great opportunity for learning for an organisation but should not come at the cost of the TGD person's well-being by reliving the negative or even traumatising experiences and misbehaviours of their previous workplace.

Overall Impact:

The cumulative effect of these challenges throughout the employee lifecycle often results in higher rates of unemployment or work dissatisfaction among TGD individuals due to the discrimination, exclusion, and harassment they face in the workplace (Hutchinson et al., 2024). This not only violates their fundamental human rights but also deprives organisations of diverse talent and perspectives, ultimately hindering their ability to innovate, adapt, and thrive in an increasingly competitive and dynamic business landscape.

Even though the inclusion of TGD employees seems like an attractive business case, many organisations lack basic awareness of the damage they do to the TGD community. The

protection of the rights of TGD employees in Australian workplaces could grow beyond a moral imperative by becoming a strategic business necessity. By addressing the systemic barriers and challenges faced by TGD individuals throughout the employee lifecycle, organisations can foster a more inclusive, equitable, and supportive work environment that empowers all employees to reach their full potential.

Consequently, this submission highlights the urgent need for comprehensive measures to combat discrimination, promote education and awareness, and implement inclusive policies and practices that genuinely embrace diversity and respect the rights of TGD individuals. By taking proactive steps to address these issues, Australian organisations can lead the way in creating a more fair and inclusive society, where the fundamental human rights of all individuals are protected and celebrated.

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