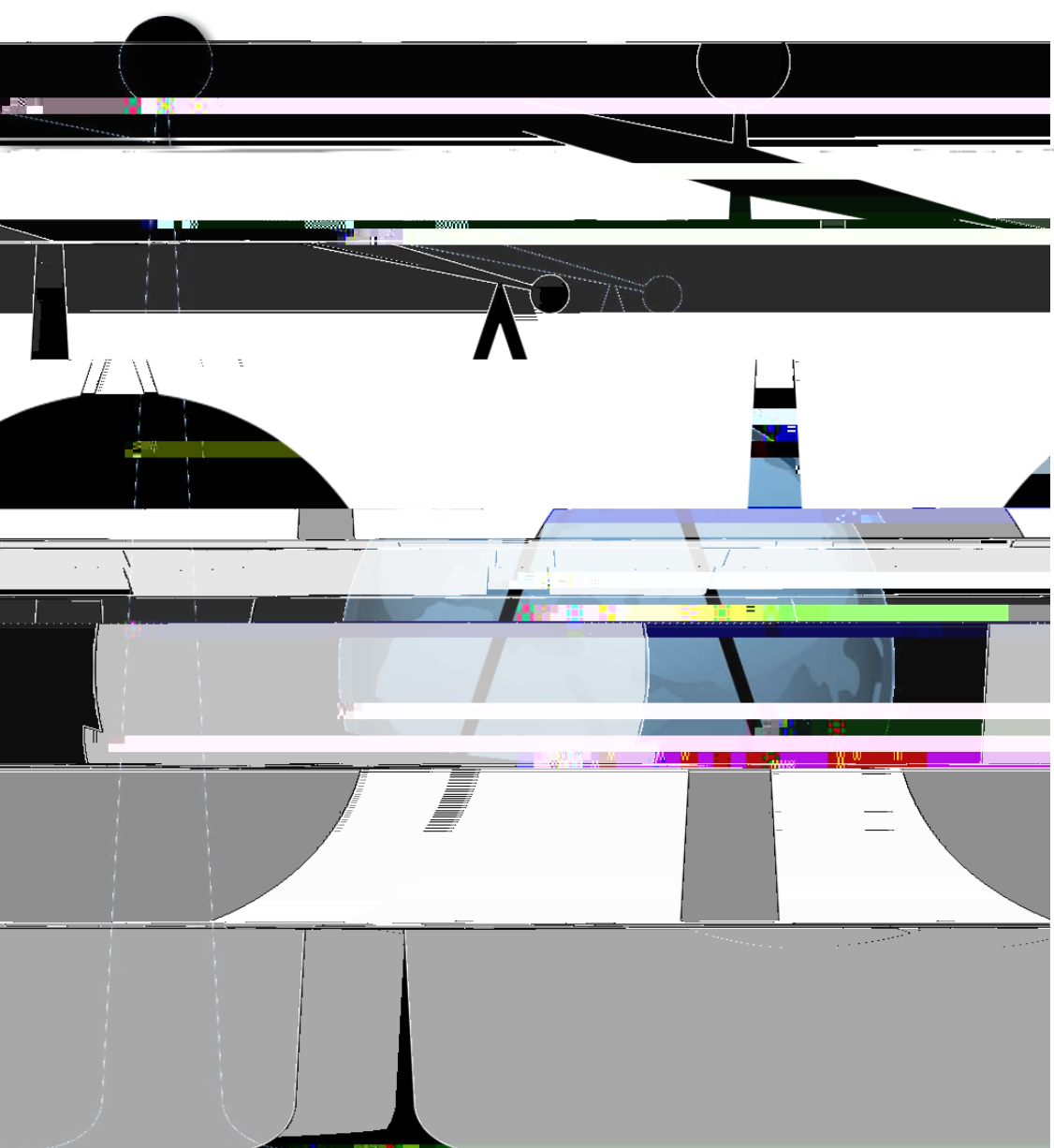
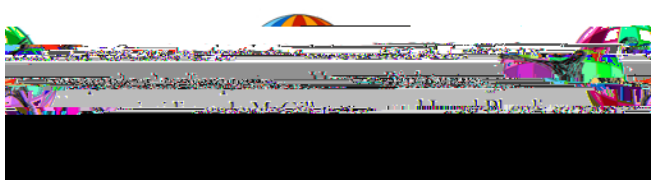


Is it Really 'All for One and One for All'?

The Strengths and Weaknesses of the International Human Rights System



International Human Rights Internship Program Working Paper Series



Faculty of Law
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Abstract

The LGBTI initialism is ubiquitous in Australian rights advocacy. Under this banner, the lesbian,

[Naming is] ultimately a discussion about respect, a discussion about who is given visibility, a discussion about how power is distributed. ... It's not just a debate about an initialism or a set of terminology. That's the proxy for discussion about social change, social power, respect, self respect, visibility, variety of things that are absolutely essential to people's ability to live in the world and feel that their experience and desire and sense of self is being honoured.

I. Introduction: A Human Rights Movement at Breaking Point

The LGBTI initialism brings together five distinct groups: lesbian (L),³ gay (G),⁴ bisexual (B),⁵ trans (T)⁶ and intersex (I)⁷ communities – into one rights movement.

Under this banner (or closely related banners like LGBT or LGBTIQ Aus), Australian LGBTI advocates have achieved important rights protections for many amongst their

¹ phia-7

constituencies. Yet, each letter in the LGBTI initialism represents a distinct community with its own identity, voice and policy concerns. As the LGBTI ‘alphabet soup’ grows over time, these constituent communities are grappling with the question of how to align with other communities in the LGBTI family. Now, some have started to question the efficacy of the LGBTI label as an organising concept for advocacy, and whether it serves all communities equally – if at all.

Ostensibly due to the ubiquity of the LGBTI term in advocacy work, academic research is yet to truly consider abandoning the initialism. By canvassing the voices from within the different lesbian, gay, bisexual, trans and intersex communities, this paper seeks to fill this gap in research. It undertakes a normative evaluation of LGBTI initialism for advocacy, by asking one simple question: does the LGBTI label create more problems than it solves?

Ultimately, this paper concludes that it is not the term, but its usage, which is to blame. On one hand, the LGBTI initialism remains a powerful symbol rooted in a rich history, which often allows its five constituent communities to harness their similarities and pursue their agendas more effectively. On the other, current usage is harming the least visible members of the community – namely, trans, bisexual and intersex individuals – and LGBTI advocates must fundamentally reform how and why they use the LGBTI initialism in their work.

II. A Note on Methodology & Terminology: What’s in a Word?

In an essay such as this one, words and their meanings are paramount. As such, the author has four clarifications to make.

⁹ These protections include the decriminalisation of at(f)-3 ds 1a223.44 1]- s 062 -caor

First, the LGBTI initialism as well as the words 'lesbian', 'bisexual', 'trans' and 'intersex' – are all discursively constructed (and contested) umbrella terms. In methodology, this paper fits into the Liberationist tradition: it is less concerned with theorising LGBTI identities and more concerned with analysing LGBTI initialism as a historical and cultural phenomenon. As such, it takes peoples' expressed sexual/gender/sex identity on face value. In addition, it does not critique the normative value of their articulated policy concerns.

Second, this essay has chosen to focus on the LGBTI initialism, as opposed to any of the

argument that these debates need not be resolved before the privileged can support the human rights struggles of those who experience human rights violations or fear them’.

Fourth, for the sake of clarity, this essay will use the word ‘community’, in the absence of any other qualifier, to refer to the whole LGBTI community. It will use the word ‘subcommunity’ to refer to the five other groups – lesbian, gay, bisexual, trans and intersex communities – which constitute the LGBTI community. The author acknowledges that for their members, these subcommunities are, in reality, thriving communities in their own right. In addition, it acknowledges that many members of those subcommunities eschew involvement in

the word 'camp' existed as underground slang during the 1960s, but was popularised by the activist group Campaign Against Moral Persecution (CAMP), founded in Sydney in June 1970. Within 12 months local CAMP groups had formed in each capital city, Australia's first (informal) LGBT-related rights network⁹

B. 'Gay' and 'Gay and Lesbian'

A mere few years later, the Gay Liberation movement arrived in Australia from the US, and 'gay' replaced the use of 'camp' over a decade¹⁰. Early Australian use of the word includes the Melbourne Gay Teachers Group and the Sydney Gay Mardi Gras.

The term 'gay' was originally understood to encompass both men and women.²¹

expression became 'gay and lesbian', with early use by the Gay and Lesbian Immigration Task Force (GLITF) and the (re)named Sydney Gay and Lesbian Mardi Gras.

C.

While trans individuals played an important role in the Gay Liberation movement, not until the mid to late 1990s (and the arrival of the internet) that the trans community in Australia mobilised in a true sense. Around this time, they fought for (and gained) explicit inclusion in LGBTI initialism in Australia and globally.

Initially, the 'T' stood for various gender identities including transexed, transsexual, transgender, transvestite and transfeminine. However, in the 2000s the 'T' was popularly rebranded as 'transgender'. Recently, it has been shortened again to 'trans' (sometimes denoted as 'trans and gender diverse').

E. 'LGBTI'

This is the form of the initialism with which this essay is concerned. The inclusion of the 'I' in the LGBTI initialism is unique to Australia. One reason for this explicit inclusion of the intersex community in the Australian context is that intersex advocates have actively campaigned the explicit inclusion of the 'I' (though dissenting voices exist). Another reason is international best precedent: it is the initialism used in all parts of The Activist's Guide to the Yogyakarta Principles.

³² S Stryker, *Transgender History* (Seal Press, ed, 2008), 591; Kuhn, above n 29, 66.

³³ Tracie O'Keefe, 'Sex and/or Gender Diverse People and the Death of Transgender as an Umbrella Term' (presented at Health in Difference 2010: Doing Diversity: 7th National LGBTI Health Conference Sydney, Australia, 29 April-May 2010); Interview with Jamie Gardiner, Member at LGBTI Taskforce, Department of Premier & Cabinet, State Government of Victoria (Sydney, 10 December 2013); Stryker, above n 33, 137.

³⁴ Stryker, above n 33, 15.

³⁵ O'Keefe, above n 34.

³⁶ Transgender Victoria, above n 7.

³⁷ See above n 13.

³⁸ Advocates in other countries such as the US prefer the initialism LGBT (or increasingly, LGBTQ) because they understand intersex people as belonging to the 'T' or 'Q' categories, Human Rights Campaign (the largest US LGBTQ organisation), 'HRC Story' <<http://www.hrc.org/history>>.

³⁹ M Carpenter and D Hough, 'Employers' Guide to Intersex Inclusion' (Policy Guide, Pride in Diversity and Organisation Intersex International Australia, 2014) 14.

⁴⁰ Sheila Quinn, *An Activist's Guide to the Yogyakarta Principles* (ARC Publishing, 2010).

⁴¹ The Yogyakarta Principles (or the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity) set of principles developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts which

F. 'LGBTIQ' and beyond

While outside the scope of this essay, other longer variants of the initialism exist such as:

x LGBTIQ⁴³

x LGBTIQA⁴⁴

x LGBTIQA+⁴⁵

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B. Shared Plight, Practical Efficiencies

It was not the mere need for critical mass that brought the LGBTI community together: it was also a sense of shared plight. While this sense of commonality differs between advocates and individuals, it can be said that most LGBTI individuals share a sense of not belonging in a society defined by norms of cisgender heterosexual males and females; further, most of them face discrimination because of real or perceived sex, gender and/or sexual orientation.

While all the subcommunities have their own distinct (and increasingly divergent) agendas, their sense of shared plight leads to share policy concerns in the course of advocacy. Same marriage is an example of a policy that theoretically should benefit all the five subcommunities (while some more than others, as will be discussed in Part IV).

In particular, elder LGBTI advocates can help the younger subcommunities (eg the trans and intersex communities) fight the battles that they have already fought and won. For example, nowadays, intersex and trans advocates campaign to legitimise intersex and trans identities in the community consciousness, especially the medical community. Lesbian, gay and bisexual advocates, who waged this war during the 70s, are well placed to aid in this fight.

C. Inclusiveness in Its Own Right

A third reason for the long initialism is that, historically, the LGBTI community has provided a place of relative safety for vulnerable individuals who are not accepted as a part of any other minority group, irrespective of their specific identity label.

V. The Case Against: Out of the Frying pan and Into the Fire

A. Hierarchies of Power: ~~Bi~~Trans And Intersex~~Phobia~~ Within the LGBTI Community

The LGBTI movement is a fight against power relations. Paradoxically, one of the biggest arguments against the LGBTI initialism is that it obscures from view and perpetuates power relations between its different constituent subcommunities. These 'hierarchies of power' include biphobia, cissexism or transphobia, and stigma attached to intersex. They are exhibited by gay men and to a lesser extent, lesbian women, and disadvantage the bisexual, trans and intersex (nd i)-potr

When it comes to intersex stigma, there is little written on discrimination emanating from within the LGB

B. Hierarchies of Power in Practice: Prioritising Lesbian and Gay Policy Concerns

The hierarchies of power discussed in subsection A have a very specific manifestation in the course of advocacy: they lead to the prioritisation of lesbian and gay policy and the erasure of trans, bisexual and intersex policy concerns.

The fight for same

power of the LGBTI label can be summarised in two assumptions which appear implicit but are actually damaging and oppressive: first, that all five subcommunities share the same policy concerns; and second, that they are all equally in need.

The first assumption communicated by the LGBTI initialism stems both from its plain meaning as well as its history. On its face, the fact of naming the LGBTI movement after five constituent subcommunities suggests commonality in goals. The sense of a common purpose grounded in sexuality difference is also a historical overhang from the Gay Liberation period.

This assumption, however, is less relevant as the LGBTI initiative grows longer. The addition of each subcommunity – in particular, the trans and intersex subcommunities – represented a ‘theoretical leap’ in LGBTI advocacy. In particular, trans and intersex issues cannot be understood purely through the lens of sexual difference: trans advocates campaign mostly on issues to do with gender identity; and intersex issues revolve around bodily diversity, a third issue entirely.

The conflation of the policy agendas of all groups under the LGBTI banner can be seen in the way that SSM is being marketed as the ‘last frontier’ for LGBTI rights in Australia. Driven by a sense they have nearly exhausted their own policy agenda, many gays and lesbians assume that the other subcommunities feel a similar sense of achievement by virtue of the fact that they are part of the LGBTI community. Yet, as many bisexual, trans and intersex advocates have pointed out, viewing SSM as the last frontier overlooks the fact that their communities face many more pressing (and threatening) struggles. The obfuscation of the trans community’s actual policy concerns led the Transgender Law centre in Maine to run a ‘#morethanmarriage’ campaign.

diverted to the SSM cause, under the mistaken assumption that this was what those subcommunities wanted. This left LGBTI organisations providing vital services for the bisexual, trans and intersex communities in financial ruin.

The second, and perhaps more damaging, assumption implicit in the LGBTI label is that all five subcommunities are equally in need. A movement composed of five groups, each

To its credit, AME immediately sought to liaise with trans and intersex leaders and soon withdrew its support for that legislation. Nevertheless, this example shows how the LGBTI movement often proceeds without input from actual trans and intersex individuals.

Further, not all instances of discriminatory advocacy are resolved like this. A recent example is the recruitment of Rainbow Fertility as a sponsor and speaker at the series “LGBTIQ’ Inclusion in Higher Education’ at the University of Western Sydney. Rainbow fertility offers ‘preimplantation genetic diagnosis’ for same couples to screen for and eliminate ‘severe genetic disorders’, which they define to include intersex variations. The sponsorship of so-called LGBTI events by centres that do participate in such medical procedures is not only setting a precedent against which intersex advocates need to fight; put bluntly, it is advocating for the termination of children carrying certain intersex variations.

While this essay expresses no normative opinion on prenatal screening, this anecdote is nevertheless an urgent moment to consider, as one commentator put it, the ‘nature of community’. If one subcommunity can so flagrantly ignore the agenda of the intersex subcommunity, there is, at the best, a severe lack of knowledge about the intersex community; at worst, there exists an active refusal to include intersex people. This must be resolved if intersex (and also trans and bisexual) individuals are going to continue to invest their energies in the LGBTI movement.

D. Perpetuating Racism, Classism And Other Discrimination

In fact, the LGBTI movement perpetuates hierarchies of power not just between the different subcommunities, but also hierarchies based on class and race. It is important to remember that the Gay Liberation movement (the predecessor to the LGBTI movement) arose out of a time when issues of racial and class disadvantage had not yet reached the spotlight. Therefore, early LGBTI organisations, many of which still exist today, were riddled with internal structures to mitigate them.

While racism and classism exist broadly in society, it is argued that the LGBTI community provides a space where an individual species of racism and classism thrive. Indigenous Australian, Asian, people of colour (POC) and writers from other racial minorities

particularly in the attitudes of white gay men. They point to disproportionately high levels of racism within LGBTI spaces (particularly online, such as on social ~~and~~ apps). It is argued that LGBTI individuals are often unaware of their own capacity to perpetrate

Despite this extra imperative, white privilege appears entwined with the fabric of LGBTI organisations according both to the testimony of its LGBTI victims and the community's own advocacy record.

E. Promoting Singular Theoretical Narratives And Representations

Clashes between subcommunities within the LGBTI community extend farther than just their contrasting policy priorities: it also has to do with the ways these groups theorise and represent their identities. Not only do these theoretical narratives matter for how different advocates in the LGBTI movement relate and communicate with each other; it also matters for their advocacy, because so much of advocacy involves educating individuals on LGBTI identities. In addition, the narratives that advocates disseminate need to prov (d)-1 (

the trans experience and for this reason, have been explicitly discouraged by trans advocates. While the very existence of trans narratives in the mainstream media would normally be cause for celebration, some of the representations propounded by LGBTI advocates thus do more harm than good.

Equally, Koyama and Weasel have noted that the voiced experiences of intersex people are often used by LGBTI advocates as an intellectual metaphor to deconstruct gender and sexuality in public education campaigns, without actually giving any weight to the actual experiences of the intersex individuals themselves. Recounting the experiences of intersex people only as a means to help people understand lesbian and gay identities not only devalues intersex people and their place in the LGBTI community, but it also does nothing to help actual intersex people struggling with their identity.

VI. Moving Forward: Don't Throw The Baby Out With The Bathwater

There are three options for addressing the problems presented in Part IV:

1. Dissolve the LGBTI movement;
2. Invent a new term for the LGBTI community;
3. Keep the LGBTI term, but use it differently.

This essay argues that the third option is preferable.

A. Dissolving the LGBTI Movement: Should We Disband the Army?

One solution is to stop using the initialism altogether and to let each of the five subcommunities advocate for its rights separately. It is important to acknowledge the voices

within the different subcommunities who advocate for this option, including gay and lesbian separatists,⁵⁷ trans advocates⁵⁸ and intersex advocates.

Nevertheless, with the exception of the intersex community (whose addition is much more recent),⁵⁹ this essay argues that attempts by advocates to carve up the LGBTI community would be futile. Not only is the LGBTI movement a product of history, but also the LGBTI initialism has now entered common parlance.

More importantly, there is normative value in ~~the~~ ~~initialism~~. This is because the LGBTI label holds precious symbolic and linguistic currency. While advocates have an educative role, they also have a role to speak in a way that their constituents understand. The LGBTI label is often the most practical and ~~inclusive~~ ~~inclusive~~ way for advocates to communicate with their constituents.

Further, advocating separately for the subcommunities risks severely jeopardising the progress that has been made for certain subcommunities, especially the less visible ones. It is important to note that, despite articulating numerous problems with LGBTI advocacy in general, many bisexual⁶¹, intersex⁶² and trans⁶³ advocates still support their subcommunities' inclusion in the LGBTI movement.

⁵⁷ See, eg, Julie Hartman, 'The Effects of Lesbian Separatism on Bisexual Women's Identity and Community' (2006) 5(4) *Journal of Bisexuality* 176.

⁵⁸ O'Keefe, above n 34.

⁵⁹ Lauren Guy, 'The struggles faced by the intersex community are different to those faced by the LGBT community' *University Times* (online), 5 November 2016, <http://www.universitytimes.ie/2016/11/the-struggles-faced-by-the-intersex-community/> >> BDC TGBT T Taratism 3.521 -1.293 Td [(35DC)4.4 (T)-0426 (n)-1 (e)-4.1j -0.00

B. Back to the Drawing Board: Should We Invent a New?

Unsurprisingly, many have looked for a new term to replace the LGBTI initialism. One such word is 'queer'. Used pejoratively towards members of the LGBT community in the late 19th century, 'queer' was reclaimed in the late 70s. As discussed in Part I, 'queer' can be used as a catchall phrase to describe people who do not identify as LGBTI but equally do not identify as cisgender or heterosexual. However, the word 'queer' is also sometimes used as a blanket term for anyone belonging to the LGBTI community. Younger, more radical LGBTI individuals often prefer the term 'queer' because it is more inclusive and politically charged. It is also more inclusive of questioning individuals and others who do not identify with one of the delineated LGBTI subcommunities, such as trans people who have undergone their transition and no longer identify as trans.

Yet, its political charge is precisely the reason many LGBTI folk do not like 'queer' as an identity label. 'Queer' can trigger many LGBTI individuals, including gay men who are old enough to have had it used against them as an insult. Second, many intersex people, who often are heterosexual and cisgender, feel that 'queer' assumes notions of gender subversion which do not play a part in their identity. Third, many older bisexuals do not identify with the term, given its original reclamation was mainly by gays and lesbians. This said,

C. Rethink, Regroup And Reclaim Towards a New Way of Using the LGBTI Initialism

There is no denying that the current usage of the LGBTI label is problematic. Yet, as discussed in Part IV, the LGBTI label has a historical significance and symbolic value which can be harnessed by all subcommunities to progress their advocacy efforts. As such, this essay argues that the LGBTI initialism should be kept, however its usage must be more sensitive and proscriptive. The recommendations below are by no means exhaustive, but are designed to prompt a discussion within the LGBTI community as to how it can reclaim the LGBTI label.

1. Advocates need to educate themselves on bisexual, trans and intersex issues through immediate consultation with those subcommunities

Most of the harms identified in this essay stem, in essence, from ignorance on behalf of LGBTI advocates about the less visible subcommunities and their needs. In no (he)menc (he)2uBI (du

people see LGB, for example, the absence of the letters 'T' and 'I' is noticeable. This prompts the person to consider why that regime does not serve the priorities of trans or intersex individuals. This draws attention to the various theoretical differences between the different subcommunities which are absent from the current advocacy dialogue.

4. Advocates should take proactive steps to give the bisexual, trans and intersex communities more

Reforming use of the LGBTI label is not sufficient, however. The LGBTI community is a site of domination and power against bisexual, trans and intersex communities. This leads to the systemic deprioritisation of their policy priorities and often the erasure of those communities themselves.

As such, reclamation of the LGBTI initialism must extend beyond mere use of the term. LGBTI organisations must incorporate new methods to combat internal power politics by actively prioritising the least powerful subcommunities.

Such measures can include:

- x Giving additional resources to initiatives which target the trans, intersex and bisexual subcommunities, such as research, speaking opportunities or public education campaigns;
- x Ensuring that all the subcommunities are represented in positions of leadership, working groups, speaking panels, initiatives etc;
- x Ensuring that decisionmaking processes acknowledge and delineate different levels of urgency between different subcommunities;
- x Where possible, openly acknowledging the hierarchies of power and history of marginalisation which exists within the LGBTI community;
- x Being deliberate and thorough with language generally, such as by separating out the different issues that affect different groups: for example, instead of writing 'homophobia', write 'biphobia, transphobia, intersexphobia'.

Racism and classism also disproportionately affect LGBTI individuals, yet current advocacy obscures and compounds that oppression.

A key challenge in introducing a new letter will be including LGBTI elders in the decision-making and education processes. This should be the focus of future research.

7. Curating a greater plurality of LGBTI narratives

Another identified harm is the lack of diversity in narratives and voices emerging from LGBTI advocacy. This gives rise to misconceptions about the different subcommunities and in turn, makes it harder for those subcommunities to pursue their own agendas.

Therefore, an important job for LGBTI advocates is to uncover and disseminate the diversity of LGBTI voices that exist. This is more difficult from a branding perspective than focusing on a few key narratives, such as the 'love is love' and 'born this way'. While cultivating this content takes more effort on the part of the LGBTI organisations, it simplifies the work of subcommunity-specific organisation because they can build off the narratives already in the public domain. In time, the public will become comfortable with the fact that these narratives are diverse and, at times, conflicting.

8. Educate the media and the public on LGBTI history, theory and perspectives

A final problem identified in Part V is that the media, the public and even LGBTI individuals propagate the LGBTI label without knowing what it represents. This ignorant use extends the reach of the harms inherent in the label.

LGBTI advocates need to ramp up their educative efforts. This ranges from including an expanded form of the LGBTI initialism in all resources which it is used, to holding public seminars on LGBTI history, advocacy and even the initialism itself. One of the key motivations for writing this paper was the lack of literature on the LGBTI initialism. LGBTI advocates need to work to fill this void.

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O'Keefe, Tracie, 'Sex and/or Gender Diverse People and the Death of Transgender as an Umbrella Term' (Paper presented at Health in Difference 2010: Doing Diversity: 7th National LGBTI Health Conference Sydney, Australia, 29 April/ May 2010)

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