



Thematic Brief | Ending discrimination on the basis of sexuality, gender identity and expression

In the Pacific, diverse populations contribute to Pacific communities at local and national levels, with their own preferred terms for people with diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC) including lesbian, gay, bisexual, trans or gender diverse, or intersex (LGBTI) people.

This Thematic Brief provides information and analysis about equality for people with diverse SOGIESC in the Pacific Islands region, also referencing the Pacific's involvement in achieving the Sustainable Development Goals (SDGs) for which a key pillar is to "leave no one behind." The SDGs recognise that to eradicate poverty and achieve sustainable development there is a need to address all people in society including marginalized groups and vulnerable populations, such as LGBTI people who may be discriminated based on their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).

The brief has been written for the Support Unit of Pacific Women Shaping Pacific Development (*Pacific Women*), connecting more than 170 gender equality initiatives supported by the Australian Government and implemented by over 160 partners across 14 Pacific Island countries. There are initiatives that promote gender equality and inclusion for the LGBTI community, or people with diverse SOGIESC, supported by *Pacific Women*.

Pacific Women is one of the largest global commitments to gender equality. It partners with governments, local and international non-government organisations (NGOs), private sector, disabled people's organisations, coalitions and others to improve the political, economic and social opportunities of Pacific women and to end violence against women and girls. The emphasis for *Pacific Women* is on partnerships and locally-driven development. *Pacific Women* supported initiatives respond to the commitments in the 2012 Pacific Leaders' Gender Equality Declaration, while also supporting Australia's Pacific Step-up and its Partnerships for Recovery approach of working together with Pacific partners to address COVID-19 impacts on women, girls and their communities.^{1 2 3}

Five Key Messages

The five key messages provide background to inclusion issues for people with diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC) in the Pacific.

The Thematic Brief sets out why *Pacific Women* is supporting people with diverse SOGIESC and women in all their diversity to enjoy their human rights and fully participate in their communities.

1. People with diverse SOGIESC experience violence, harassment, discrimination, social stigma and poverty.
2. Law reform is needed to end discrimination and criminalisation of people with diverse SOGIESC and to enable them to live free from discrimination and violence.
3. Pacific Island countries have long had populations with diverse SOGIESC; in some countries people with diverse SOGIESC have specific cultural roles.
4. People with diverse SOGIESC are particularly vulnerable during periods of disasters and emergencies including the COVID-19 pandemic.
5. There is increasing momentum for SOGIESC equality, with leadership from diverse Pacific Islanders.

Message 1 People with diverse SOGIESC experience violence, harassment, discrimination, social stigma and poverty.

Why?

Pacific Islanders with diverse SOGIESC should enjoy the same rights and opportunities to live fulfilling lives as any other person, as outlined in the underlying principle of the 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs) – that no one should be left behind. However, often discriminatory legal systems and social stigma can work against people with diverse SOGIESC while online spaces are creating new avenues for shaming, harassment and violence.

‘Being LGBTI often carries with it a stigma underpinned by a belief that one is bad, incomplete, sick, immature, unskilled, sinful, or generally undesirable.’

Diverse Voices for Action (DIVA) for Equality⁴

The evidence

The United Nations Human Rights Council Independent Expert on sexual orientation and gender identity has reported that:

- ‘The combination of social prejudice and criminalization has the effect of marginalizing lesbian, gay, bisexual, trans and gender non-conforming persons and excluding them from essential services, including health, education, employment, housing and access to justice. The spiral of discrimination, marginalization and exclusion may start within the family, extend to the community and have a life-long effect on socioeconomic inclusion. Through this process, stigmatization and exclusion intersect with poverty to the extent that, in many countries, lesbian, gay, bisexual, trans and gender non-conforming persons are disproportionately affected by poverty, homelessness and food insecurity.’⁵

These conditions exist in the Pacific, as in other parts of the world. Due to poor data collection⁶ and a reluctance to report violence and discrimination,⁷ there are few reliable statistics.⁸ However, case studies, anecdotal evidence and a small but significant global body of work demonstrates the multiple layers of marginalisation and discrimination people with diverse SOGIESC face.⁹

The DIVA for Equality report titled, ‘Unjust, Unequal, Unstoppable’ reports the experiences of lesbian and bisexual women, transmen and gender non-conforming people in Fiji, including:¹⁰

- 35 per cent of people surveyed had experienced mental and emotional abuse.
- 8 per cent of people surveyed had been sexually assaulted by a family member.
- 44 per cent of people surveyed who experienced sexual assault said they would never tell anyone except close friends or their partner about it.
- more than 80 per cent had been forced to leave their home.

Many of the global factors identified in the 2018 Independent Expert’s report for the United Nations Human Rights Council (including exclusion from family, local community and faith communities and discrimination in schools, workplaces, public services and public spaces) were repeated by people with diverse SOGIESC in Fiji interviewed for research conducted for the Down By The River report.¹¹

The Fijian High Court acknowledged that people with diverse SOGIESC experience violence, harassment, discrimination and social stigma when it heard a case of rape and incest in *State v Veresa*.¹² In that case, a police inspector raped his sister to ‘correct’ her sexual orientation. The High Court recognised this as a breach of human rights and that ‘the accused’s homophobic wish [was] to “correct” what he perceived to be his sister’s divergent sexual journey. To impose one’s own perception of what is normal in a sexual context and to deny another the right to choose his or her own sexual orientation is a denial of a basic human right.’¹³

Message 2 Law reform is needed to end discrimination and criminalisation of people with diverse SOGIESC and to enable them to live free from discrimination and violence.

Why?

Laws that target same-sex sexuality create fear amongst people with diverse SOGIESC. Even where these laws are not enforced, they create a context for other forms of violence and discrimination. Anti-discrimination laws in the Pacific rarely mention sexual orientation or gender identity and few countries have enabling laws such as recognition of changed gender markers on identity documents.

The evidence

The British introduced many laws criminalising consensual same-sex sexual activity during colonisation in the Pacific region which have remained until today.¹⁴ Same-sex relations remain criminalised in half of the countries in which *Pacific Women* works: the Cook Islands, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu.¹⁵ In some countries, including Papua New Guinea and Tuvalu, there are no recent or recorded prosecutions. Old legislation often criminalises sodomy between men but makes no mention of women. However, in some countries, laws have been amended to criminalise sex between women, such as the Solomon Islands Penal Code.

Major legal reform has occurred in the last two decades, with the Republic of the Marshall Islands (2005), Niue (2007), Vanuatu (2007), Fiji (2010), Palau (2014) and Nauru (2016) joining the Federated States of Micronesia in decriminalising same-sex sexual acts.

Constitutional anti-discrimination provisions and specific laws in the Pacific rarely include sexual orientation or gender identity as protected characteristics, with Fiji being a notable exception. Some states have extended protection on the basis of sexual orientation in employment, including the Cook Islands, Kiribati and Samoa, as well as Fiji.¹⁶

However, even in more progressive contexts such as Fiji, much enabling legislation is missing. For example, there is no legal basis in Fiji or most other Pacific countries to change gender markers on identity documents; or for same-sex partners to adopt children or use in-vitro fertilisation. Laws, such as impersonation or loitering, have also been used to target people with diverse SOGIESC, even if they were not originally developed to criminalise them.

Diverse SOGIESC civil society organisations are actively seeking law reform in some Pacific Island countries:

- The Tonga Leitis Association has proposed removing sodomy from Tonga's criminal code and rewording rape provisions to use gender neutral language.¹⁷
- In the Cook Islands, the Te Tiare Association is advocating for legislators to decriminalise same-sex sexual acts.¹⁸

Legal reform priorities of Pacific Islands diverse SOGIESC civil society organisations differ from those in other parts of the world. For example, some organisations in the Pacific may not advocate for same-sex marriage, instead focusing on ending violence and discrimination.

Message 3 Pacific Island countries have long had populations with diverse SOGIESC; in some countries people with diverse SOGIESC have specific cultural roles.

Why?

People with diverse SOGIESC exist in all societies, including those in the Pacific. Sometimes, moral arguments are used against the existence of diverse SOGIESC communities, perpetuating the false idea that SOGIESC diversity is a Western import when, in fact, it has long existed as an integral part of many Pacific communities.¹⁹ These harmful arguments are used to justify discriminatory laws, policies and social

stigma against people with diverse SOGIESC. However, in many Pacific Island countries, people with diverse SOGIESC have specific, respected cultural roles that pre-date Western influences.²⁰

The evidence

There is limited accurate population data on people with diverse SOGIESC in the Pacific (or other regions). However, a conservative estimate for the percentage of people with diverse SOGIESC in any community is five per cent.

The extent to which people with diverse SOGIESC will share this aspect of themselves with other people will vary considerably between countries and communities and may depend on perceptions of safety. If Pacific Islanders with diverse SOGIESC choose not to be visible, that does not mean they are not there.

Male-assigned at birth ‘third gender’ identities are well known in the Pacific, including Leitis in Tonga and Fa’afafine in Samoa. Female-assigned at birth gender fluidity is also part of many cultures, such as the Fa’atama of Samoa.²¹

Further, there are many people across the Pacific who identify as members of the diverse SOGIESC community who may use terms such as lesbian or gay, or who may use other locally-recognised terms. The self-identification of these people is, in itself, evidence of existence.

Colonialism and religion have changed Pacific cultures significantly. Commentators have suggested that colonial administrators and missionaries excluded and regulated diverse SOGIESC identities that have long existed in the Pacific.²² This suggests that since the 18th century there have been changes in the perception of the pre-existing diverse SOGIESC community.²³

‘Identity expressions that would be defined as homosexual or transgendered using western vocabulary often fulfilled important and well-established cultural or ritual functions within various parts of the Pacific [but] contact with Europeans and the subsequent colonisation of the region often resulted in rejection or suppression of these identities.’

Eleanor Kleiber and D. Keali’i MacKenzie, University of Hawai’i at Mānoa²⁴

Message 4 People with diverse SOGIESC are particularly vulnerable during periods of disasters and emergencies including the COVID-19 pandemic.

Why?

The marginalisation, violence, harassment, discrimination and poverty experienced by people with diverse SOGIESC undermines their capacity to develop resilient livelihoods. It reduces their capacity to survive and recover in times of emergency, and limits their potential to participate in preparedness activities. Stigma may also lead people with diverse SOGIESC to avoid official relief and recovery support.

Crises such as COVID-19 have specific – and severe – implications for the health and security of people with diverse SOGIESC.²⁵ People with diverse SOGIESC in the Pacific face high rates of violence from intimate partners and violence from extended family members.²⁶ Pacific SOGIESC advocacy groups have drawn attention to the fact this violence is likely to be exacerbated due to the social, health and economic impacts of the pandemic, when people may be forced to move into homes which are hostile.²⁷ People with diverse SOGIESC also suffer from high rates of mental health issues, including depression, anxiety and suicide. Elderly people with diverse SOGIESC are more likely to be isolated, without family and support systems.

The evidence

The Down By The River Report documented the challenges experienced by people with diverse SOGIESC in accessing safe shelter and early recovery programs during emergencies. It also highlighted the community-based violence, harassment and trauma that people with diverse SOGIESC experience at these times.

'Trying to get the house back to normal, trying to organise children back to school. It was a real struggle, there was some help other children were accessing, but because we are LBT women, we can't really tap into that help.'

Fijian resident, quoted in *Down By The River*, following Tropical Cyclone Winston²⁸

Humanitarian organisations can counter these problems by including people with diverse SOGIESC in assessments, designs and emergency response implementation. Informal networks amongst people with diverse SOGIESC also support resilience in the face of exclusion.

During a crisis such as COVID-19, people with diverse SOGIESC may also have difficulty interacting with the health and humanitarian system due to social stigma and discrimination. Diverse families may face challenges accessing aid and government social support due to non-conforming family structures that the government or humanitarian system do not recognise.²⁹

'After the cyclone I went to my friend's house who is a trans woman, her wall of her bedroom was gone and her clothes gone. We had to share clothes and things. I don't know if I would be here if we were not friends.'

Fijian resident, quoted in *Down By The River*, following Tropical Cyclone Winston³⁰

Research in the Pacific has highlighted the capacities that third gender cultural groups bring to their whole communities.³¹ This has been recognised in the DFAT external review *Evaluation of Protection in Australia's Disaster Responses in the Pacific*, stating: 'LGBTI will be among affected populations ... have specific needs, are at higher risk of exclusion and discrimination and subsequently need more targeted measures to ensure their inclusion in preparedness and response measures. There is a need for sensitisation for all humanitarian actors and to find appropriate mechanisms to support partnerships with local actors specialised in LGBTI issues to facilitate safe and dignified inclusion.'³²

The exclusion of people with diverse SOGIESC from disaster response efforts can be caused by cultural biases against people with diverse SOGIESC (especially transphobia). It can also be exacerbated by the greater levels of financial precarity people with diverse SOGIESC experience generally, even before a disaster. A specific concern around emergency shelter and distribution, for example, is having safe and equal access to personal hygiene products and toilet facilities for diverse SOGIESC.

Compounding the post-disaster issues of excluding people with diverse SOGIESC from accessing services or participating in developing solutions, is that people with diverse SOGIESC can be 'blamed' for causing natural disasters.³³

'Straight after TC Winston, whenever we came past these people, they would call out that it is 'us people' that caused TC Winston. I asked them 'what people?' And they said LGBTQ people. I told them it is climate change, not LGBTQ people.'

Fijian resident, quoted in *Down By The River*, following Tropical Cyclone Winston³⁴

Pacific civil society organisations including DIVA for Equality, Rainbow Pride Foundation, Tonga Leitis Association and VPride are actively involved in community-based research and advocacy to disaster risk reduction and humanitarian organisations. Many are also active in climate justice forums, recognising that climate change and increased severity and frequency of disasters will impact the most marginalised.

Message 5 There is increasing momentum for SOGIESC equality, with leadership from diverse Pacific Islanders.

Why?

Advocacy and programming to support people with diverse SOGIESC needs to be led by Pacific people, respecting Pasifika autonomy and being consistent with Pacific values. By taking this approach, there is space for affirming the common humanity of people with diverse SOGIESC and other Pacific Islanders.

The evidence

Regional, national and subnational Pacific civil society organisations are actively engaging with their communities, other civil society groups and governments on issues affecting people with diverse SOGIESC. These organisations draw upon community resilience, a positive outlook and a strong sense of Pacific identity. These organisations are diverse – based around cultural ‘third gender’ identities, feminist collective organising, broad LGBTI issues, or specific community issues such as sex worker rights. These organisations and informal groups are involved in legal and political advocacy, community-based research and empowerment and service delivery.

There is solidarity between civil society organisations advocating for the rights of women and for the rights of people with diverse SOGIESC. An example is the inclusive approach taken at the 2016 and 2019 Pacific Feminist Forums where, for example, the Tonga Leitis Association was a member of a regional organising group. The Pacific Feminist Charter Action Plan includes a ‘joint call for LGBTI human rights, including actions to decriminalise homosexuality in all Pacific small island states, a call for recognition of third gender identities, and for a full review of all legislation, policies and procedures toward compliance with universal human rights.’³⁵

Pacific Islanders with diverse SOGIESC are predominantly people of faith, creating potential for constructive dialogue within faith communities and faith-based organisations:

- Cultural third gender groups and other people with diverse SOGIESC often undertake hospitality and other roles within church communities.
- A 2019 report by UnitingWorld on disaster and theology demonstrates there are many faith leaders across the Pacific who are ready to engage on diverse SOGIESC issues.³⁶
- In 2018, Papua New Guinean Catholic Cardinal John Ribat told a Vatican forum: ‘The youth are talking about it freely and in the language they use, and they are encouraging us to “Call us, address us this because this is who we are”.’³⁷

‘Churches have made significant gains in areas of gender violence and, because of this, we feel confident to begin addressing awareness of LGBTQI rights with the same approach.’

Ethel George, Project Coordinator, Anglican Church of Melanesia³⁸

What can be done?

Pacific Women promotes inclusive development and is supporting organisations that advocate for the rights of people with diverse SOGIESC. It supports locally-led initiatives such as Shifting the Power Coalition's Strengthening Diverse Women's Leadership in Humanitarian Action project and the work of the We Rise Coalition. It also supports people with diverse SOGIESC to attend regional and global conferences including the Pacific Feminist Forum and the Commission on the Status of Women (CSW), and promotes inclusive programming to support the involvement of people with diverse SOGIESC with *Pacific Women's* implementing partners.

Examples of best practice that have a positive impact on diverse SOGIESC inclusion and rights include:

- Ensuring that Pacific Islanders with diverse SOGIESC are central to the design and implementation of development projects, consistent with the maxim 'nothing about us without us.'
- Recognising that Pacific Islanders with diverse SOGIESC have a long heritage in Pacific Island societies and are part of the future of Pacific Island nations.
- Ensuring partnerships between diverse SOGIESC civil society organisations and other actors are equitable and safe.
- Funding community-based research into the lived experiences of people with diverse SOGIESC in the Pacific, to support community-based advocacy, program design, inclusive policy and law reform.
- Supporting organisational strengthening of diverse SOGIESC civil society organisations, in addition to funding for service delivery.
- Disaggregating and tracking data on diverse SOGIESC inclusion (where safe to do so).
- Ensuring that social inclusion frameworks are inclusive of diverse SOGIESC and are used in design, implementation and evaluation phases of projects.
- Adopting a norms-based approach that focuses attention on the attitudes and practices that are the underlying cause of exclusion of people of diverse SOGIESC.
- Adopting an intersectional approach that recognises some people of diverse SOGIESC experience multiple forms of exclusion, such as women, people with a disability or ethnic minorities.
- Ensuring women with diverse SOGIESC – such as lesbian women and trans women – are included in all women's empowerment projects as part of 'women in all their diversity,' rather than viewing LGBTI people as a separate group.
- Advocating for law reform to: decriminalise same-sex acts between consenting adults; extend anti-discrimination provisions to Pacific Islanders with diverse SOGIESC; enact enabling legislation that supports people with diverse SOGIESC to live full lives and contribute to their communities.
- Opening dialogue about diverse SOGIESC issues and avoiding the assumption that dialogue about diverse SOGIESC issues is too hard, controversial or risky.
- Supporting training for civil servants, civil society actors and other institutions to address discrimination on the basis of diverse SOGIESC, including providers of key services such as employment, housing, health care and education.

While discussion of diverse SOGIESC inclusion remains challenging in some forums, significant legal reform has been occurring since 2005 and regional civil society forums have affirmed the need to address diverse SOGIESC inclusion. The Federated States of Micronesia, Fiji, the Republic of the Marshall Islands, Nauru, Palau, Samoa, Tuvalu and Vanuatu are all signatories to the 2008 UN Human Rights Council Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity.

Pacific Women will continue to work to promote inclusive development, in line with the Australian Government's Gender Equality and Women's Empowerment Strategy: 'This strategy sees gender as a power relation. Work on gender equality therefore aims to address unequal gender norms that constrain women and men, as well as transgender and intersex people.'³⁹

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