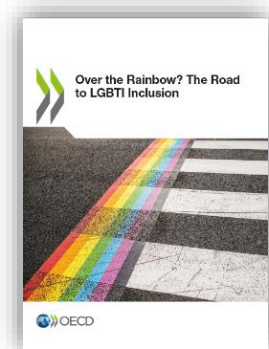


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a 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.



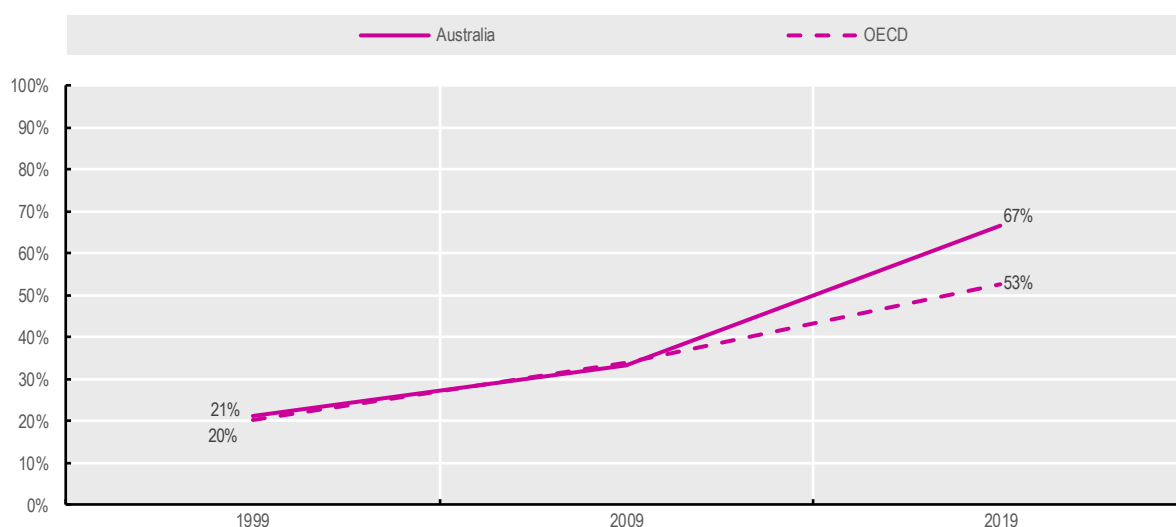
Legal LGBTI inclusivity in Australia

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. Australia is one of 17 countries in the OECD that have most legal protections for sexual and gender minorities. These countries are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in Australia has dramatically improved over the past decade

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Australia and OECD-wide



Note: Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

The increase in legal LGBTI inclusivity in Australia has been particularly strong over the past decade (Figure 1). As of 2019, Australia performs better than the OECD average concerning laws protecting LGBTI individuals against discrimination (Figure 2). In 2013, the *Sex Discrimination Act* was amended to prohibit discrimination on a set of new grounds, namely sexual orientation, gender identity, intersex status and relationship status. Discrimination on these grounds is banned in a broad range of fields (employment, education, the provision of and access to goods and services including housing, etc.), and the *Australian Human Rights Commission* has been in charge of enforcing this provision ever since. Persecution (or a well-founded fear of persecution) based on the aforementioned grounds is also explicitly recognised as a valid reason for granting asylum since 2014.

Australia's achievements in addressing the unique challenges faced by same-sex couples have also been extraordinary (Figure 2). The battle over same-sex marriage was won in a spectacular way, following a postal survey that was 'one of a kind' in Australian history. Approximately 79.5% of eligible Australians (all citizens who were on the Commonwealth Electoral Roll and at least 18 years of age) participated in the survey, and a substantial majority (61.6%) voted in favour of same-sex marriage. This remarkable outcome allowed the Australian Government to facilitate the passage of a private member's bill legalising same-sex marriage that came into force in December 2017. On top of being granted full legal recognition of their partnerships, Australian same-sex couples are also treated on an equal (or nearly equal) footing relative to different-sex couples concerning access to adoption and assisted reproductive technology.

How could Australia further improve legal LGBTI inclusivity?

Only a small minority of Australian states criminalise hate crime explicitly based on sexual orientation, and none does so explicitly based on gender identity and intersex status. Moreover, although Australian transgender individuals are allowed to change their gender marker in the civil registry, this legal gender recognition is still conditioned on gender-reassignment surgeries and/or treatments (Figure 2). Yet, the trend OECD-wide is to de-pathologise this process: in the past ten years, 15 OECD countries have abolished medical requirements initially attached to legal gender recognition. Therefore, further improving legal LGBTI inclusivity in Australia could entail: (i) explicitly criminalising hate crime based on sexual orientation, gender identity and intersex status throughout the national territory; and (ii) basing the change of gender marker for transgender people on self-determination.

Policies to foster LGBTI inclusion in Australia, beyond LGBTI-inclusive laws

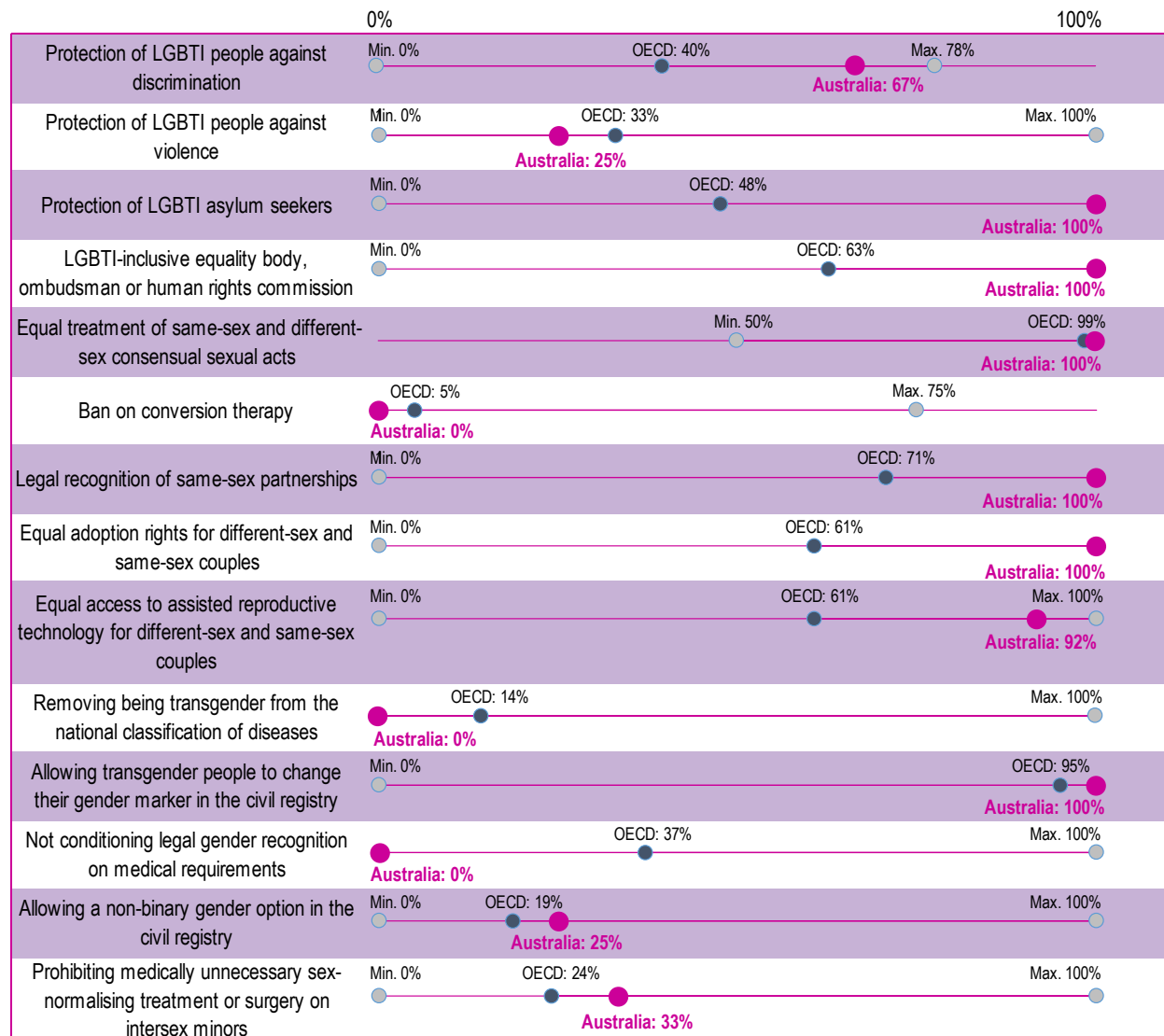
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Australia is one of 15 OECD countries that include or have included a question on self-identification as heterosexual, homosexual, or bisexual in at least one nationally representative survey. But it does not yet collect information on the share of transgender and intersex people among the adult population.

It would also be important that Australia be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How Australia compares

Legal LGBTI inclusivity as of 30 June 2019 in Australia and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component "Protection of LGBTI people's civil liberties" is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in Australia equal to 67% regarding the protection of LGBTI people against discrimination means that two thirds (six) of the nine antidiscrimination provisions critical to protect LGBTI people are in force in Australia as of 2019. "Min." refers to the score of the bottom-performing OECD country(ies) while "Max." refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of Australia.

Source: OECD (2020), Over the Rainbow? The Road to LGBTI Inclusion, Chapter 3. [Download data from [Statlink](#)]

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