

## LGBTI REFUGEES AND PEOPLE SEEKING ASYLUM

The Victorian AIDS Council (VAC) is calling for an end to the detention of LGBTI people seeking asylum and their families, especially in countries and regions that cannot guarantee their safety. The VAC also advocates for the establishment of best practice guidelines and training for asylum claims that involve LGBTI status.

### AUSTRALIA IS FAILING TO MEET ITS HUMAN RIGHTS OBLIGATIONS

While there is still room for improvement, compared to other nations, Australia performs well as far as its treatment of LGBTI citizens is concerned. However, the same standard of treatment is not extended to LGBTI people seeking asylum in Australia's care. Currently, LGBTI people seeking asylum are often outed in front of their fellow asylum seekers, subjected to humiliating and unnecessary scrutiny,<sup>1</sup> and sent to regions where same-sex sexual activity is illegal,<sup>2</sup> or where they face likely and foreseeable harm and discrimination due to their LGBTI status.<sup>3</sup> These LGBTI-specific abuses are in addition to the physical and sexual abuses experienced by people detained in Australia's offshore detention centres.<sup>4</sup>

As the Australian Human Rights Commission has noted, "Australia has international obligations to protect the human rights of all asylum seekers and refugees who arrive in Australia, regardless of how or where they arrive and whether they arrive with or without a visa."<sup>5</sup>

The United Nations Convention Relating to the Status of Refugees (hereafter the Refugee Convention) defines who refugees are, and outlines the basic rights countries should guarantee to people seeking safety.<sup>6</sup>

The Refugee Convention defines a 'refugee' as a person who is outside their country and unable or unwilling to return due to a well-founded fear of being persecuted due to their race, religion, nationality, membership of a particular social group, or political opinion. According to the United Nations High Commissioner for Refugees, LGBTI people fall under the category of "particular social group".<sup>7</sup>

Australia has ratified the Refugee Convention. It is therefore obligated to uphold the principle of non-refoulement, in which it must ensure people seeking asylum who meet, or may meet, the definition of a refugee are not sent back to a country where they will likely be persecuted. However, Australia's *Migration Act 1958* defines a refugee differently to the Refugee Convention, allowing people seeking asylum to be sent back to unsafe countries if "effective protection measures" are available or to regions of a country deemed to be safe even when other regions of the same country are not.

It is easy to confirm when LGBTI refugees will be persecuted upon return to a country or region that cannot guarantee their safety. These countries and regions often lack anti-discrimination legislation or have overtly discriminatory legislation targeting LGBTI peoples and cultures that still

exhibit violence towards people due to their gender and sexuality. For example, homosexuality is criminalised in over 70 countries.<sup>8</sup>

In addition to the Refugee Convention, Australia is party to a number of international treaties that have bearing on its obligations towards people seeking asylum, including the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture, and the Convention on the Rights of the Child (CRC). For example, the ICCPR<sup>9</sup> and CRC<sup>10</sup> provide the right to not be arbitrarily detained. People seeking safety are still owed protection under these treaties even if they are not deemed to be refugees.

### NEED FOR TRAINING FOR ASYLUM CLAIMS INVOLVING LGBTI STATUS

The United Nations Human Rights Commission (UNHCR) has released a training programme detailing how to appropriately handle asylum claims involving LGBTI status.<sup>11</sup> The programme "covers relevant terminology, international law, communication, operational protection, conducting interviews, durable solutions, health, and refugee status determination."<sup>12</sup> VAC endorses the UNHCR training programme and recommends it be adopted for use by Australian immigration authorities. Should Australia develop its own training programme, experts in LGBTI human rights must be involved in its development.

### NEED FOR RESOURCING OF LGBTI SUPPORT ORGANISATIONS

The *Nothing for Them Report (2014)*<sup>13</sup> highlighted significant gaps in service provision for LGBT refugees and people seeking asylum, and the *Something for Them Report (2016)*<sup>14</sup> highlighted barriers to their feeling of belonging once settled in Australia. VAC is calling for secure funding arrangements and the development of referral pathways to LGBTI support organisations to ensure that LGBTI refugees and people seeking asylum have the support they need to establish themselves in Australia.

### RECOMMENDATIONS

- LGBTI people seeking asylum should not be sent to, or be detained in, any region/s unsafe for LGBTI people.
- All staff involved in the processing of asylum claims should receive training and adhere to best practice guidelines in determining asylum claims involving LGBTI status. It is recommended that the UNHCR training programme be used for this purpose.
- If Australia develops its own training programme for assessing asylum claims involving LGBTI status, its development must involve experts in LGBTI human rights.
- Referral pathways should be developed, and funding should be allocated to service providers and organisations able to support LGBTI refugees and people seeking asylum during and after the assessment process.

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### REFERENCES

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- <sup>2</sup> For example, Manus Island in Papua New Guinea (PNG). Section 210 of the PNG *Criminal Code Act 1974* makes male homosexual acts criminal offences punishable by up to 14 years' imprisonment.
- <sup>3</sup> Hasham, N. (05/03/16). Gay refugees on Nauru 'prisoners' in their home as Australia prepares to celebrate Mardi Gras. *The Sydney Morning Herald*. <<http://www.smh.com.au/federal-politics/political-news/gay-refugees-on-nauru-prisoners-in-their-home-as-australia-prepares-to-celebrate-mardi-gras-20160304-gnam2h.html>> (last accessed 18/09/17).
- <sup>4</sup> Australian Human Rights Commission. (2017). Asylum seekers, refugees and human rights: snapshot report (2nd edition). <[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_Snapshot%20report\\_2nd%20edition\\_2017\\_WEB.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_Snapshot%20report_2nd%20edition_2017_WEB.pdf)> (last accessed 18/09/17).
- <sup>5</sup> Australian Human Rights Commission. (14/08/15). Asylum seekers and refugees guide. <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/asylum-seekers-and-refugees-guide>> (last accessed 18/09/17).
- <sup>6</sup> The office of the United Nations High Commissioner for Refugees. (2010). Convention and protocol relating to the status of refugees. UNHCR, Geneva, Switzerland. <<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>> (last accessed 18/09/17).
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- <sup>9</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, (entered into force 23 March 1976), Article 9(1).
- <sup>10</sup> Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 37(b).
- <sup>11</sup> The office of the United Nations High Commissioner for Refugees. (Date unknown). Training package on the protection of LGBTI persons in forced displacement. <<http://www.unhcrexchange.org/old/topics/15810/contents>> (last accessed 18/09/17).
- <sup>12</sup> Levin, M. and Bond, K. (24/12/15). UNHCR leads in LGBTI refugee, asylum seeker protection. The office of the United Nations High Commissioner for Refugees. <<http://www.unhcr.org/en-au/news/latest/2015/12/567bb2869/unhcr-leads-in-lgbti-refugee-asylum-seeker-protection.html>> (last accessed 18/09/17).
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