

BRIEFING DOCUMENT ON CONTEMPORARY ISSUES FOR REFUGEES AND PEOPLE SEEKING ASYLUM WHO HAVE DIVERSE SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEXUAL CHARACTERISTICS (SOGIESC)

Presented to the LGBTI Parliamentary Friends, Canberra

Co-Chairs

Mr Warren Entsch MP, Mr Graham Perrett MP and Senator Janet Rice

By Associate Professor Ruth McNair AM

Chairperson Pride Foundation Australia

On behalf of The Pride Foundation Australia LGBTIQA+ advisory group



December 2019

Acknowledgement and Contributors

Pride Foundation Australia convened our LGBTIQ+ advisory group in April 2019 to help us develop priority areas for funding and advocacy regarding LGBTIQ+ refugees and people seeking asylum in Australia. We are immensely grateful for the time and expertise that the members of this group have offered and acknowledge the huge amount that is yet to be done to overcome the extreme disadvantage faced by this group of people.

Contributors to this briefing document:

| | |
|---------------------|--|
| Dennis Altman | Patron Pride Foundation Australia |
| Nina-Ashfield-Crook | Amnesty Australia, Regional LGBTIQ campaign lead |
| Alison Battisson | Human Rights for All, NSW |
| Meg Clark | Rainbow Refugees Action Committee, ACT |
| Tina Dixon | Queer Sisterhood project |
| Heather Grace Jones | Service for the Treatment and Rehabilitation of Torture and Trauma Survivors |
| Alastair Lawrie | Lawyer |
| Ruby Mountford | Pride Foundation Australia |
| Liz Rickman | Australian Lesbian Medical Association |
| Ian Seal | Three for All Foundation |
| Alex Taylor | Asylum Seeker Centre, NSW |

And several people with lived experience

Contact details:

Ruth McNair AM

E: ruth.mcnair@pridefoundation.org.au

M: 0419 120 663

W: www.pridefoundation.org.au

Summary

Asylum seekers and refugees who have diverse Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC) are some of the most vulnerable people in Australian society. Some are in offshore detention, some are in community detention, and some live within the Australian community but still face barriers including poverty, insecure housing, lack of appropriate medical support services, and more.

Various stakeholders including but not limited to the Pride Foundation Australia's LGBTIQ+ advisory group are already doing significant work to support SOGIESC refugees and asylum seekers and advocate for meaningful change. However, there are large gaps and ongoing challenges across numerous axes including: data collection, access to safety and justice, the legal process for claiming asylum and seeking permanent protection in Australia, and community sponsorship.

Below are key issues identified by the advisory group and suggested actions. We ask that the LGBTI Parliamentary Friends assist by advocating for these actions internally in Parliament and with the relevant Government Departments in the first instance.

Terminology

We have chosen to use the term **Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC)** rather than LGBTIQ for this population group. This term is preferred in international human rights discourses, as it does not assume particular identities that tend to come out of western experience.

Existing data

There is a lack of any reliable data about the number of SOCIESC refugees and asylum seekers in Australia (including those in closed detention and community detention), and seeking asylum offshore. It is difficult to determine the numbers in detention and in the community due to safety fears regarding disclosure.

We can make an estimate however. It is generally understood that approximately 5% of any general population is SOGIESC

- applied to the 95,000 people seeking asylum arriving in Australia over the last five years... a safe estimate would be **4,750 are SOGIESC**
- however, SOGIESC numbers are possibly higher than population figures, given that this is a specific reason for forced displacement

More than 50 SOGIESC people seeking asylum have been identified through the LGBTI peer support group in Sydney, and a group of more than 20 are meeting regularly in Melbourne. The Sydney group is supported by Asylum Seekers Centre and the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors. The Melbourne group is supported by the Uniting Asylum Seeker Welcome Centre.

Suggestion: To support SOGIESC data collection where possible and safe to do so. Safety includes ensuring the confidentiality of each individual.

The Canberra Statement

The Canberra Statement¹ was produced as an outcome of the Queer Displacements: Sexuality, Migration and Exile, the first Australian conference on queer asylum that was held in November 2019 at ANU in Canberra.

It was written by Tina Dixson (Queer Displacement co-convenor), Renee Dixson (Queer Displacement co-convenor) and Eliana Rubashkyn (co-founder Rainbow Path New Zealand) in consultation with the attendees of the Queer Displacements Conference.

¹ <http://bit.ly/cbr-statement>

- The statement details the ongoing human rights abuses and discrimination that SOGIESC asylum seekers and refugees are experiencing not only in their countries of origin but en route to safety and in host countries.
- The statement sets out reforms needed to ensure access to safety and justice for SOGIESC asylum seekers and refugees.
- The statement calls for a global solidarity with lesbian, gay, bisexual, transgender, intersex and queer asylum seekers, refugees and other forcibly displaced people.

Suggestions: Specific key issues that require Government attention include specific vulnerabilities, and asylum claims processes.

Vulnerability

SOGIESC refugees and people seeking asylum are a particularly vulnerable subgroup within the LGBTIQ+ community in Australia and have had little attention to date from Government.

They are vulnerable due to

- high levels of trauma, and experiences of discrimination, violence, marginalisation, fear of violence related to being SOGIESC and their forced displacement
- mental and physical health impacts of this trauma
- loss of connection to families and communities of origin due to SOGIESC stigma and discrimination
- barriers to employment
- poverty (for example - 80% of people seeking asylum are no longer eligible for basic income support due to cuts to Status Resolution Support Services)
- difficulty accessing health services, housing , education and social support

Further, there are particular vulnerabilities in detention due to:

- being housed with mixed refugee and general deportation populations (including many with criminal backgrounds)
- accommodation being assigned on sex assigned at birth rather than affirmed gender
- high rates of assault, abuse and harassment in detention targeted to SOGIESC people. There have been several known instances of sexual and other assault of SOGIESC detainees in Manus/Nauru as well as in onshore detention. Trans people are particularly vulnerable in detention
- lengthy terms of detention and high rates of return to country of origin due to difficulties in disclosing refugee status based on SOGIESC claims

The Yogyakarta Principles plus 10², produced in 2017, highlight several human rights pertinent to SOGIESC refugees including the right to State protection, and the rights to freedom from criminalisation on the basis of SOGIESC.

Suggestion: These principles should be upheld in any Australian jurisdiction.

Suggestion: There is a strong case to identify SOGIESC refugees and people seeking asylum as a vulnerable subgroup requiring special attention.

Asylum claims process

There are deep concerns regarding the asylum claims process for SOGIESC people.

Transcripts show evidence of unreasonable treatment and expectations including:

- lack of understanding and knowledge by interviewers regarding SOGIESC sensitivities
- SOGIESC asylum seekers being required to use interpreters despite being able to speak English and asking not to use interpreters for fear of discriminatory interpreter attitudes and possible mis-translation
- unreasonable requirements to prove SOGIESC status, despite people having hidden their status in home countries where being SOGIESC is illegal (e.g. evidence in the form of photographs and love letters - which would have been dangerous to take or keep)
- failure to take into account a reasonable expectation of persecution on SOGIESC grounds if returned to their home country

Suggestions:

The Department of Home Affairs' guidelines on assessing claims related to sexual orientation and gender identity³ should be implemented as consistent department policy rather than a guideline only. These guidelines are not perfect but are an improvement on many of the practices that have been reported on concerning departmental interviews with SOGIESC people seeking asylum.⁴

² www.yogyakartaprinciples.org

³ <https://www.homeaffairs.gov.au/foi/files/2017/FA170301116-documents-released.pdf>

⁴ <https://www.smh.com.au/lifestyle/not-gay-enough-the-bizarre-hoops-asylum-seekers-have-to-leap-through-20171128-gzu1vq.html>

There could be more coordination between delegates, tribunal members, agents, lawyers and translators on a number of issues. Better coordination could provide a safer space for these protection claims to be referred, supported and made, including:

- guideline and training updates on sexual and gender diversity, including culturally specific understandings
- bringing together the intelligence on country information between academics, civil society, DFAT and Home Affairs, and explaining reasons for gaps in reporting
- more training on navigating in country and out of country confidentiality concerns to give decision makers a better way to approach their decision-making, including reliance on 'lifestyle' stereotypes, the concept of discretion and the ability of applicants to bring forward corroborative evidence, including witnesses to their hearings.

Many of these issues are detailed in the UNHRC 2016 guidelines on refugee claims relating to sexual orientation and gender identity reviews and assessments.⁵ Encouragement to adhere to these guidelines is needed.

Community Sponsorship initiative

Pride Foundation Australia is supporting the Australian Community Refugee Sponsorship Initiative, as it would be very applicable for SOCIESC subgroups. This initiative is a joint project of the Refugee Council of Australia, Amnesty International Australia, Save the Children Australia, Welcome to Australia, Rural Australians for Refugees and the Australian Churches Refugee Taskforce. It that aims to build upon the existing Community Support Program to:

- expand the eligibility criteria to include additional vulnerable groups,
- increase the size of the program,
- expand the eligibility of sponsors to include groups of individuals,
- reduce the cost of sponsorship, and
- increase access to public services for sponsored refugees.⁶

The initiative has received philanthropic funding to employ staff and conduct feasibility work on the concept in Australia including gathering individual pledges of support. Amnesty International Australia LGBTIQ networks are also interested in this area and have developed 'My New Rainbow Neighbour' campaign in Queensland to encourage local sponsors.

⁵ www.refworld.org/sogi

⁶ <https://apo.org.au/node/248346>

The advantages of the initiative for SOGIESC refugees include:

- allowing additional refugees to enter Australia outside of the current quota
- sharing the cost of settlement between government and concerned individual Australians
- sponsorship by small groups of SOGIESC individuals would enable connections to be made for the refugee with their local SOGIESC community, enhancing wellbeing and successful settlement.

An inquiry into Canada's refugee community sponsorship agreement⁷ with UNHCR has shed light on the additional obstacles facing SOGIESC people seeking asylum. UNHCR operates in countries where being openly SOGIESC is still criminalised, and while UNHCR have anti-discrimination guidelines these are difficult to enforce in those countries. So, there are concerns that SOGIESC refugees are less likely to be sponsored. A discussion paper on the inquiry implications and recommendations for Australia recommends that

there should be a dedicated Sexual Orientation and Gender Identity (SOGI) stream to facilitate endorsed LGBT community organizations and LGBT support groups and allies (such as some church groups) to sponsor persecuted SOGI asylum seekers (page 2).⁸

Suggestion: There is a need to reform the existing Australian Community Support Program, and to develop a dedicated SOGIESC stream.

⁷ <https://ccrweb.ca/en/private-sponsorship-refugees>

⁸ <https://drive.google.com/open?id=0BxnNPds8pi9qSlZNVVpna3kzM0NmbFhFdTduR2dGQ1owZ3lF>