



Queer Sisterhood Project

**Human Rights Violations of Lesbian, Gay, Bisexual,
Transgender and Intersex
Asylum-Seeking and Refugee Women
in Australia:**

A Shadow Report for Australia

July 2018

Submitted to the United Nations CEDAW Committee for
consideration at the 70th Session of the Committee on the
Elimination of Discrimination Against Women

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List of Acronyms

LGBTI	People who identify as lesbian, gay, bisexual, transgender or intersex
SGBV	Sexual and gender-based violence
SHEV	Safe Haven Enterprise Visa
SOGII	Sexual orientation, gender identity and intersex status
TPV	Temporary Protection Visa
1951 Convention	1951 Convention relating to the Status of Refugees

Introduction

This report is a submission by the Queer Sisterhood Project to the United Nations (UN) Committee on the Elimination of Discrimination Against Women (“the CEDAW Committee” or the “Committee”) on the occasion of its consideration of the State of Australia’s implementation of the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) at the 70th session taking place in Geneva, Switzerland, 2-20th July 2018.

Queer Sisterhood Project is a peer-run support group for lesbian and bisexual women, transgender and intersex (LGBTI) women who sought asylum in Australia fleeing persecution for reasons of their sexual orientation and/or gender identity.

The purpose of this report is to highlight the human rights violations of LGBTI asylum-seeking and refugee women.

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Summary of Recommendations

1. Urgently close the offshore processing centres and bring refugees and asylum seekers to Australia. In the interim, improve the quality of and access to appropriate medical facilities in offshore processing centres;
2. End the policy of mandatory detention and impose time limits and periodic review on immigration detention;
3. Ensure sexual orientation, gender identity and intersex (SOGII) status is accepted as grounds for seeking asylum in Australia as per 1951 Convention and relevant UN guidelines;
4. Ensure that LGBTI individuals are not placed in the immigration detention;
5. Ensure that LGBTI-sensitive training is mandatory for all workers and decision makers involved in the asylum-seeking process, and includes issues specific to lesbian and bisexual women and transgender and intersex people;
9. Ensure that legal protections against all forms of discrimination against women are in place regardless of age, sexual orientation and gender identity, race, nationality, ethnicity, religion or migration status;
10. Ensure that the migration status does not impede access to justice for all women;
11. Take all measures to remove gender pay gap in Australia and provide sufficient information to asylum-seeking and refugee women on the work rights and complaints mechanisms;
12. Ensure equal access to education for refugees and asylum seekers, in particular women regardless of their visa status;
13. Make its social security framework accessible to all people living in Australia regardless of their visa status. In the interim, reinstate the Status Resolution Support Services program in full;
14. Ensure sufficient funding and resourcing for relevant non-

6. Ensure that the principle of non-refoulement, which prohibits the return of a refugee to a territory where his or her life or freedom is threatened be implemented when considering LGBTI individuals seeking asylum;

7. Recognise that durable solutions such as resettlement are the only viable solution for LGBTI asylum seekers and refugees;

8. Ensure that age, gender and diversity (that includes sexual orientation) are mainstreamed in the to-be-adopted Global Compact on Refugees and Global Compact for Safe, Orderly and Regular Migration.

government and civil society organisations working to support LGBTI people seeking asylum and refugees;

15. Ensure sex, age and diversity disaggregated data collection on refugees and asylum seekers.

The Right to Seek Asylum

Article 1 – 3 Right to Non-Discrimination; Article 4 Temporary Measures

List of Special Issues: Women in Detention; Refugees, Asylum-seeking and Stateless Women and Girls.

Sexual Orientation and Gender Identity as Ground for Asylum

Article 1A(2) of the 1951 Convention relating to the Status of Refugees (1951 Convention) and/or its 1967 Protocol¹ recognises the right of people fleeing persecution for reasons of their sexual orientation and/or gender identity to apply for protection. 1951 Convention considers the term “persecution” to include serious human rights violations, or the cumulative effect of lesser forms of violence and harm.²

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in forced displacement experience compounding protection challenges and distinct vulnerabilities. The intersection of their sex, age, sexual orientation and gender identity, nationality, ethnicity/race, religion, social or economic status and/or HIV status may contribute to further violence and discrimination.

LGBTI women find themselves in a particularly vulnerable situation being subjected to cultural shame and stigma, life-threatening discrimination, physical violence, extreme forms sexual and gender-based violence (such as corrective rape, gang rape, forced marriages), sexual exploitation, prejudice from officials, humanitarian staff and/or refugee populations. In addition, often they face rejection from their families and communities.

LGBTI women also find it more challenging to exercise their right to seek asylum as in many countries women do not enjoy freedom of movement without a male guardian.

LGBTI women in forced displacement suffer targeted abuse as a direct result of their diverse sexual orientation or gender identity. LGBTI asylum-seekers and refugees

1 UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951; Protocol Relating to the Status of Refugees, 31 January 1967.

2 UNCHR (2012) Guidelines On International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees; UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, HCR/1P/4/ENG/REV. 3 (hereafter “UNHCR, Handbook”), paras. 51–53.

experience widespread discrimination when accessing housing, employment, education, health and psychological care and other social services in host countries. They may be evicted from their housing and fired from jobs once their sexuality or gender identity is revealed. Corrective rape is often used against LGBTI women as a way to enforce normalised gender identities. Many transgender and intersex asylum-seekers and refugees suffer multiple discrimination based on their gender identity and often have to engage in survival sex. LGBTI women human rights defenders are often targeted not only because of their gender, but also sexual orientation and human rights work. This includes being subjected to sexual and gender-based violence, kidnapping, threats and harm to their families and partners.

While United Nations entities have integrated issues of sexual orientation and gender identity into their work, and host countries such as Australia are increasingly recognising the protection needs of LGBTI persons, there is still a long way to go in practical application. A consistent approach and mandatory training of the immigration officials is required to ensure that LGBTI people claims for asylum are assessed with fairness and equality before the law. Further, protection needs and rights focused on providing trauma-informed, age-, gender-, ability- and sexuality-sensitive social support must be integrated and implemented.

Durable solutions must recognise the rights and dignities of LGBTI women. Resettlement may be the only viable durable solution for LGBTI refugees facing specific protection risks due to their sexual orientation and gender identity. Detention must be the last resort for LGBTI women. Furthermore, it is imperative to recognise gender-diverse and same-sex couple as a family unit regardless the ability to prove it with documents, understanding the impossibility to live as an open family in their countries of origin.

Australia's Obligations under the 1951 Convention relating to the Status of Refugees

The changes to the Migration Act in 2014 have resulted in treating people seeking asylum arriving to Australia with or without a visa differently. The differentiation between different modes of arrival has created an unfair treatment of people seeking asylum. People seeking asylum who arrived in Australia with a valid visa (mostly by plane) when recognised as refugees are granted a permanent protection visa. People seeking asylum

who arrived in Australia without a visa (mostly by boats), when recognised as refugees are granted a Temporary Protection Visa (TPV) or a Safe Haven Enterprise Visa (SHEV). People holding either of those temporary protection visas will need to reply for them again after the visa expiry date.

Overall such treatment of asylum seekers contradicts the 1951 Convention foreseeing a possibility to cross the borders in search for protection without a valid visa.

Australia maintains its harmful policy of offshore processing and mandatory detention.³ There is no time limit on onshore or offshore detention which places LGBTI asylum-seeking women at further risk of and vulnerability to SGBV and sexual harassment because of their sexual orientation and gender identity. This results in serious impact on their mental health and further traumas.

Recommendations:

That the Australian Government:

- 1. Urgently close the offshore processing centres and bring refugees and asylum seekers to Australia. In the interim, improve the quality of and access to appropriate medical facilities in offshore processing centres;**
- 2. End the policy of mandatory detention and impose time limits and periodic review on immigration detention;**
- 3. Ensure sexual orientation, gender identity and intersex (SOGII) status is accepted as grounds for seeking asylum in Australia as per 1951 Convention and relevant UN guidelines;**
- 4. Ensure that LGBTI individuals are not placed in the immigration detention;**
- 5. Ensure that LGBTI-sensitive training is mandatory for all workers and decision makers involved in the asylum-seeking process, and includes issues specific to lesbian and bisexual women and transgender and intersex people;**

³ Australia has obligations under international law to the asylum seekers and refugees on Manus Island and Nauru because of its 'effective control' of those individuals. For a discussion of these principles and case law, see Andrew and Renata Kaldor Centre for International Refugee Law, *Factsheet: Offshore processing: Australia's responsibility for asylum seekers and refugees in Nauru and Papua New Guinea* (2015).

6. Ensure that the principle of non-refoulement, which prohibits the return of a refugee to a territory where his or her life or freedom is threatened be implemented when considering LGBTI individuals seeking asylum;

7. Recognise that durable solutions such as resettlement are the only viable solution for LGBTI asylum seekers and refugees;

8. Ensure that age, gender and diversity⁴ (that includes sexual orientation) are mainstreamed in the to-be-adopted Global Compact on Refugees and Global Compact for Safe, Orderly and Regular Migration.

Discrimination on the grounds of sexual orientation, gender identity and migration status

Article 1 – 3 Right to Non-Discrimination; Article 4 Temporary Measures; Article 10 Education; Article 11 Employment; Article 12 Health Care, Article 13 Economic and Social Life.

List of Special Issues: Refugees, Asylum-seeking and Stateless Women and Girls: Employment; Health.

Discrimination

Article 1 of the Universal Declaration of Human Rights provides that “all human beings are born free and equal in dignity and rights”, and Article 2 declares that “everyone is entitled to all the rights and freedoms set forth in this Declaration”.⁵ All people, including LGBTI individuals, are entitled to enjoy the protection provided for by international human rights law on the basis of equality and non-discrimination.⁶

In addition, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity sets out the human rights protection framework applicable in the context of sexual orientation and/or gender identity.¹³

⁴ Diversity refers to different values, attitudes, cultural perspectives, beliefs, ethnic background, nationality, sexual orientation, gender identity, ability, health, social status, skill and other specific personal characteristics. UNHCR (2018) Policy on Age, Gender and Diversity.

⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.

⁶ OHCHR, Report on Sexual Orientation and Gender Identity, para. 5.

In Australia, women who identify as lesbian, gay, bisexual, transgender and intersex are protected from any discrimination by a number of legislative acts such as Sex Discrimination Act, Age Discrimination Act, Disability Discrimination Act, Racial Discrimination Act and other relevant state and territories acts.

We also commend Australia on amending the Family Law Act in 2017 allowing same-sex couples to marry.

Regardless available legislative protection, full equality and enjoyment of non-discrimination and equal treatment haven not yet been achieved.

- a) 34 per cents of LGBTI people hide their sexual orientation or gender identity (SOGI) when accessing services and 39 per cent hide SOGI at work.⁷
- b) LGBTI young people report experiencing verbal homophobic abuse (61 per cent), physical homophobic abuse (18 per cent) and other types of homophobia (9 per cent), including cyberbullying, social exclusion and humiliation.⁸
- c) Transgender males and females experience significantly higher rates of non-physical and physical abuse compared with lesbians and gay men.⁹
- d) Gay, lesbian, bisexual and transgender people are three times more likely to experience depression compared to the broader population.¹⁰

LGBTI people are also at particular risk of homelessness. The report by the GALFA Foundation states that lesbian women and gay men are twice as likely to stay in crisis accommodation or sleep rough, and bisexual people at least 3 times more likely than heterosexual respondents.¹¹ LGBTI asylum-seeking and refugee women are even more at risk of homelessness, as social and public housing in Australia is only available for permanent residents or citizens. Anecdotal evidence from refuges and crisis

⁷ Australian Research Centre in Sex, Health and Society, La Trobe University, Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians (2012) pp 45-46.

⁸ Australian Research Centre in Sex, Health and Society, La Trobe University, Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people(2010), p 39.

⁹ Australian Research Centre in Sex, Health and Society, La Trobe University, Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians (2012)

¹⁰ Beyond Blue, In my shoes: Experiences of discrimination, depression and anxiety among gay, lesbian, bisexual, trans and intersex people (2012), pp 1-2.

¹¹ McNair R., Andrews C., Parkinson S., Dempsey D. (2017) LGBTQ Homelessness: Risks, Resilience, and Access to Services in Victoria. Final Report. GALFA LGBTQ Homelessness Research Project <https://www.galfa.org.au/wp-content/uploads/2018/01/LGBTI-Homelessness-project-Final-report-September-2017.pdf>

accommodation suggests that asylum-seeking and refugee women require longer and more substantial housing support.¹²

LGBTI asylum-seeking and refugee women are experiencing compounding marginalisations arising not only from the intersection of their sexual orientation and gender identity, but also age, race, ethnicity, nationality, religion and migration status.

LGBTI asylum-seeking women are particularly vulnerable to discrimination due to language barriers, limited knowledge about systems and legislation in Australia as well as precarity of their migration status.

Education

LGBTI asylum-seeking and refugee women can access education in Australia, yet their access is contingent on their visa status. LGBTI women holding a permanent protection visa are eligible for a student loan in any level of education. LGBTI women holding a Temporary Protection Visa (TPV) or a Safe Haven Enterprise Visa (SHEV) are regarded as international students. This significantly limits their access to education as they are not eligible for any students' loans and have to pay education fees at a much higher rate than domestic students.

There has been a number of Australian universities stepping up to provide fee waivers and scholarships for both women and men seeking asylum, yet this should not replace the government commitment to ensure equal access to education for women seeking asylum. Currently, the Australian Government subsidises only vocational education until the Certificate 3 and not tertiary education for people seeking asylum and refugees holding temporary protection visas.

Employment

LGBTI asylum-seeking and refugee women are often subjected to discrimination in the area of employment. Discrimination occurs on the grounds of their sexual orientation and gender identity as well as it arises from their migration status. For asylum-seeking women, the precarity of their migration status and lack of knowledge about Australia's legal system impedes their ability to pursue any remedies.

¹² Australian Women Against Violence Alliance (2017) Submission to the Department of Immigration and Border Protection on Visa Simplification <https://awava.org.au/2017/10/12/submissions/submission-department-immigration-border-protection-visa-simplification>

Case Study 1

N. is a lesbian woman seeking asylum in Australia. She has a Bridging Visa with work rights. She has been invited to attend an interview for a position of a shop assistant. After the job interview, the manager tells N. that she does not look “like a woman enough” to be employed in his store.

Despite the fact, that N. can lodge a complaint to the Anti-Discrimination Board NSW, she decides against this, fearing that her migration status and the application for protection visa will be compromised.

Case Study 2

S. is a lesbian woman seeking asylum in Australia. Her initial application for asylum has been rejected. She is currently appealing the rejection.

S. is working at the recycling station. She is the only woman in the team. All of the team members have identical work duties. After some time, S. has found out that she is paid less compared to her male colleagues. On top of this, she is also subjected to constant bullying and sexual harassment because of her sexual orientation from her male colleagues.

S. ask her manager to increase her pay to the level of her male colleagues. He does not agree.

S. decides not to lodge a complaint and keep the job, because she is afraid that she will not be able to find another secure employment on her visa.

Case Study 3

A. is a lesbian woman seeking asylum in Australia. She has not yet been assessed and recognised as a refugee. Thus, A. is holding a Bridging visa with work rights. She is a trained disability worker with an extensive experience. A. is not able to find a secure employment as employers do not want to employ her because of the bridging visa.

Unequal Rights Based on the Visa Type

Women on temporary protection visa do not enjoy the same rights as women on permanent protection visa. They do not have access to casework. Women on temporary protection visa who have disability are not eligible for National Disability Insurance Scheme (NDIS).

Women on temporary protection visa are not eligible to become citizens of Australia. They cannot travel outside Australia without a permission from the Department of Home Affairs which is granted in the exceptional circumstances. They are not eligible for family reunification.

Social Security

The Government is severely restricting the eligibility criteria for accessing the income support program for asylum seekers living in Australia from June 2018. Asylum seekers awaiting of the assessment of their refugee claims are supported via the Status Resolution Support Services (SRSS). SRSS provides financial support for basic living costs, (89% of a welfare payment for citizens) access to casework support and counselling.¹³

Cuts in the payments and eligibility criteria are leading to homelessness, depression, anxiety and self-harm.¹⁴ LGBTI asylum seeking women are particularly vulnerable as they may not have extensive support networks in their community. There are risks for them to be subjected to sexual exploitation and to engage in survival sex.

Comprehensive Data Collection

Neither government nor service providers are collecting comprehensive data on LGBTI asylum seekers and refugees.

Often LGBTI asylum seekers are applying for protection on the grounds of persecution for political opinion or membership of a particular social group or both. Asylum trends published by the Department of Home Affairs do not disaggregate data by protection

¹³ Media release, 'Cuts to support system leave people seeking asylum in destitution', Refugee Council of Australia and Australian Council of Social Service, 26 March 2018 <<https://www.refugeecouncil.org.au/media/cuts-to-support-system/>>

¹⁴ Ben Doherty, "New dose of cruelty": up to 7,000 asylum seekers to lose income support', *The Guardian* (online), 30 March 2018 <<https://www.theguardian.com/australia-news/2018/mar/30/new-dose-of-cruelty-up-to-7000-asylum-seekers-to-lose-income-support>>.

claims or any diversity characteristics of applicants apart from age, sex, country of origin and arrival mode.¹⁵

When it comes to transgender women and women born with intersex variations, they are completely invisible in any data collection on asylum seekers and refugees.

Services Available to LGBTI Asylum-Seeking and Refugee Women

LGBTI, refugee-support and settlement services are not sufficiently funded and trained to address intersecting needs of LGBTI asylum seekers and refugees.

Some of refugee and settlement organisation have started to recognise the need to provide specialist, safe and inclusive service for LGBTI asylum seekers and refugees, yet such support is contingent on funding. Prior training on LGBTI inclusivity is required to insure high standards of services and creation of safer spaces for LGBTI asylum seekers and refugees.

Fearing homophobia in refugee and settlement services and racism and xenophobia in LGBTI services, LGBTI asylum-seeking and refugee women remain invisible, isolated and without any support networks.

Recommendations

That the Australian Government:

9. Ensure that legal protections against all forms of discrimination against women are in place regardless of age, sexual orientation and gender identity, race, nationality, ethnicity, religion or migration status;

10. Ensure that the migration status does not impede access to justice for all women;

11. Take all measures to remove gender pay gap in Australia and provide sufficient information to asylum-seeking and refugee women on the work rights and complaints mechanisms;

12. Ensure equal access to education for refugees and asylum seekers, in particular women regardless of their visa status;

¹⁵ For example, see <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-annual-2011-12.pdf#search=asylum%20trends>

13. Make its social security framework accessible to all people living in Australia regardless of their visa status. In the interim, reinstate the Status Resolution Support Services program in full;

14. Ensure sufficient funding and resourcing for relevant non-government and civil society organisations working to support LGBTI people seeking asylum and refugees;

15. Ensure sex, age and diversity disaggregated data collection on refugees and asylum seekers.